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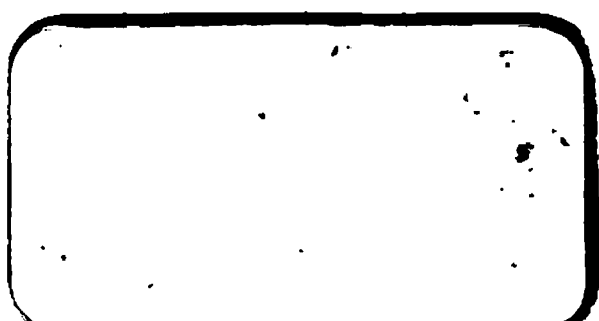
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MODERN PRECEDENTS

IN

CONVEYANCING;

WITH

VARIATIONS

ADAPTING THEM TO DIFFERENT CIRCUMSTANCES OF TITLE:

AND

COPIOUS EXPLANATORY AND PRACTICAL

NOTES,

ON THE NATURE AND USE OF THE PROVISIONS CONTAINED IN THEM.

Third Edition,

WITH GREAT ADDITIONS,

INCLUDING

DIRECTIONS FOR THE SOLICITOR IN ALL MATTERS CONNECTED
WITH EACH ASSURANCE.

BY CHARLES BARTON,

OF THE INNER TEMPLE, ESQ. BARRISTER AT LAW, AUTHOR OF THE ELEMENTS
OF CONVEYANCING.

Validiora sunt exempla quam verba, et plenius opere docetur quàm voce.

VOL. VI.

ANNUITIES AND DEBTORS AND CREDITORS.

LONDON:

PRINTED FOR CHARLES HUNTER, LAW BOOKSELLER,
BELL-YARD, LINCOLN'S-INN.

1821.

LONDON:

PRINTED BY THOMAS DAVISON, WHITEFRIARS.



C O N T E N T S

OF

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MODERN PRECEDENTS
IN
CONVEYANCING.

CLASS IV.

GRANTS OF ANNUITIES.

No. I.

*An Agreement for the Grant of an Annuity (1),
during the Life of the Grantor.*

*Variations where it is for the Life of the Grantee or the
Lives of Nominees.*

Also other Variations, as in Margin below.

ARTICLES OF AGREEMENT, entered into this **ANNUITIES.**

Agreement.

(1) Where parties have respectively agreed for the sale and purchase of an annuity, and it is not convenient for the grantee to advance the whole of the purchase money immediately, a written contract is sometimes entered into between them for completing the transaction at a future time; and see *ante*, INTRODUCTION.

Agreement for
an annuity.

And such agreement may be concluded on the part of a feme covert, with respect to property to which she is entitled independently of her husband; *Essex v. Atkins*, 14 Ves. jun. 542.

**DEBTOR
AND
CREDITOR.**

*Assignment by
Commissioners of
Bankrupt
to a Provisional
Assignee.*

*An Appointment of a
Commissioners, and of
the Bankrupt's Personal
Variations where
of Real Estate:*

CO

No

*Assignment by
Provisional to
General
Assignees.*

*Assignment of the Personal
Variations where
of Real Estate:*

No

*Assignment
by Assignees
of Bankrupt
to a Creditor.*

*An Assignment by Assignees
(with the Consent of
advancing a Poundage*

No

**3. Insolvent
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*Assignment by
Insolvent Debtor
to Provisional
Assignee.*

*Assignment by an
Insolvent Debtor to a
Provisional Assignee*

*Assignment by
Provisional Assignee of Insolvent
to Acting Assignee.*

*Assignment of
a Provisional
Assignee to an Acting
Assignee*

Ride

yearly sum of ANNUITIES.
 of the United Agreement.
 and called Eng-

from the day
 mentioned or
 tinue and be

aid (grantor) To commence
 on payment of
 residue of pur-
 chase money.

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, say, Nominees.

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ominees, say, Nominees.

vivor or longest

m of years, determin- Years.

. as ante, p. 2, n. (1).

ANNUITIES.

Agreement.

Parties.

Recitals.

day of , [*in the year of the reign, &c. and] in the year of our Lord . BETWEEN (*the grantor*) of, &c. of the one part, and (*the grantee*) of, &c. of the other part, WHEREAS the said (*grantee*) hath contracted with the said (*grantor*) for the purchase of an annuity, or clear yearly sum of £ during the life of the said (*grantor*) (*or grantee, as the case may be*) (1) to be secured as hereinafter mentioned, at the price or sum of £ but it not being convenient for the said (*grantee*) to advance the whole of the said sum immediately, the said (*grantor*) hath agreed to accept the same at the times hereinafter mentioned (that is to say), the sum of £ , part thereof, upon the day of the date of these presents, and the further sum of £ being the residue thereof, on or before the day of now next ensuing (2). AND WHEREAS

Brevity.

* If brevity be particularly desired, those parts of the precedent which are within brackets may be omitted.

Nominees.

(1) If the annuity is to be granted during the lives of nominees, say,

“ During the lives of (*the nominees*) of, &c. and the life of the survivor of them.”

Years.

If the annuity is to be granted for a term of years, determinable on lives, say,

“ For the term of years, if the said (*grantor*), (*grantee*), or (*nominees*), or either of them shall so long live.”

Instalments.

(2) If the sum is to be completed by more than two payments, say,

“ The sum of £ upon the signing of these pre-

for better securing the performance of the said contract, the said parties have agreed to enter into such covenants and agreements respecting the same as hereinafter are expressed. Now THEREFORE THESE PRESENTS WITNESS, that (1) in pursuance and part performance of the said contract, on the part of the said (*grantor*) and for and in consideration of the sum of £ of lawful money of that part of the United Kingdom of Great Britain and Ireland called England, to him in hand well and truly paid by the said (*grantee*) at or immediately before the sealing and delivery of these presents, in part of the said purchase money

ANNUITIES.

Agreement.

WITNESS, that in consideration of part of consideration now paid.

sents by the said (*grantor*) and the further several sums of £ , £ , and £ , making together the said sum of £ , at such time or times as it may be convenient to the said (*grantee*) to pay the same, but within the space of calendar months next ensuing the date hereof, and to pay to the said (*grantee*) in the meantime, and until payment shall be made of the last of the said sums, the yearly sums following (that is to say) the yearly sum of £ for or in respect of the said sum of £ now advanced to the said (*grantor*), to commence from the day of now next ensuing, the further yearly sum of £ for or in respect of the second of the said payments or instalments, and the further yearly sum of £ for and in respect of, &c. the said several annuities or yearly sums, to commence respectively upon or from the respective times of advancing the said sums, and to continue during the natural life of," &c.

(1) If the title of the grantor to the property intended to be charged with the annuity has not been investigated, insert a clause for delivery of abstract, &c. as in Vol. I. p. 4; and if the premises, upon which the annuity is to be secured be leasehold, see also *ib.* p. 48, n. (10). Title.

ANNUITIES. OF SUM OF £ , the receipt whereof the said
Agreement. (*grantor*) doth hereby acknowledge, [and of and
 from the same doth acquit, release, exonerate, and
 for ever discharge the said (*grantee*) his executors,
 administrators, and assigns, by these presents] and
 also in consideration of the further sum of £
 And of residue to be paid as after mentioned. of like lawful and current money, (being the
 residue and in full of the said sum of £)
 to be paid by the said (*grantee*) [his executors
 or administrators,] at the time and in the manner
 hereinafter mentioned, He the said (*grantor*) [for
 himself, his heirs, executors, and administrators,]
 The grantor covenants to grant annuity during life of grantor. DOTH hereby covenant, promise, and agree, with
 and to the said (*grantee*) [his executors, admini-
 strators, and assigns,] in the manner following,
 (that is to say) that he the said (*grantor*) [his heirs,
 executors, or administrators,] shall and will at his
 [and their] own proper costs and charges in all
 things, upon receipt of the said further sum of
 £ , on or before the said day of
 (1), well and effectually grant unto the said
 (*grantee*) [his executors, administrators, and as-

Instalments.

(1) If the purchase-money is to be paid by several instalments, say,

“ AND also from and after the payment or advancement
 by the said (*grantee*) [his executors or administrators] of
 the said several and respective further sums of £
 and £ shall and will in like manner grant unto
 him and them two several further clear yearly sums of
 £ and £ during the natural lives and life
 aforesaid. AND moreover shall and will upon and imme-
 diately after payment or advancement shall be made by the
 said (*grantee*) [his executors, or administrators] of the said

signs (1),] one annuity or clear yearly sum of **ANNUITIES.**
£ of lawful money of that part of the United **Agreement.**
Kingdom of Great Britain and Ireland called Eng-
land, to commence and be payable from the day
or time of payment of the same last mentioned or
further sum of £ , and to continue and be
payable during the natural life of the said (*grantor*)
[or *grantee*] (2), by equal quarterly payments, on
the day of , the day of ,
&c. in every year, clear of all abatements and de-
ductions whatsoever, together with a propor-
tionate part of the said annuity or yearly sum of
£ , from the last day of payment thereof,
up to the day of the decease of the said (*grantor*)
[or *grantee*] (3), and shall and will at his [or

To commence
on payment of
residue of pur-
chase money.

further or last mentioned sum of £ (and which said
sums will make in the whole the said sum of £)
well and truly pay, or cause to be paid, unto the said
(*grantee*) [his executors, administrators, and assigns,] one
gross and clear annuity or yearly sum of £ , in lieu
and stead of the said several annuities or yearly sums of
£ £ £ and £ , and secure
the same by," &c. (*as above*).

(1) If the annuity is to be for the life of the grantee, these
words of representation must of course be omitted, indeed they
are in every case unnecessary; see *ante*, Vol. I. p. 2, n. (2), p.
46, n. (3).

(2) If the annuity be granted for the lives of nominees, say, **Nominees.**
“ During the natural lives of the said (*nominees*) and the
life of the survivor, or longest liver of them.”

(3) If the annuity be granted for the lives of nominees, say, **Nominees.**
“ Up to the day of the decease of the survivor or longest
liver of them the said (*nominees*).”

If the annuity is to be granted for a term of years, determin- **Years.**
able on lives, say, “ For the term of,” &c. as *ante*, p. 2, n. (1).

ANNUITIES. their] like costs and charges secure the same by the
Agreement. bond or obligation in writing of the said (*grantor*)
in the usual form and under a sufficient penalty,
with a warrant of attorney for entering up judgment thereupon; and also by charging and making
issuable the same out of ALL, &c. or other lands
and hereditaments, of which the said (*grantor*)
is, or shall be then seised of an estate of inheritance, (*or of freehold for the life of, &c. as the case may be*), in the county of , of the clear
yearly value of £ at the least, free of all
reprisals, except, &c. (1) and also shall and will de-
mise or convey the same hereditaments and pre-
mises, unto [and to the use of] a person or
persons to be named or approved of by the said
(*grantee*) [his executors, administrators, or as-
signs,] for a sufficient number of years (not
exceeding the term of 500 years) [or his or their
heirs,] upon such proper and sufficient trusts,
and in such manner and form, and with such
powers of distress and entry in case of default in
payment of the said annuity, or yearly sum of
£ , and with such other powers, provisos,
conditions, covenants, declarations, and agree-
ments, in the said deeds, instruments, and as-
surances respectively to be contained, as are
usual or proper for securing the due and regular
payment of the same at or upon the days or times
aforesaid, and as the counsel in the law of the said

Grant to con-
tain all proper
powers, &c.

Incumbrances. (1) Insert here any outgoings to which the land may be
subject.

(*grantee*) [his executors, administrators, or assigns,] shall require or advise in that behalf (1); and also (2) a covenant and agreement on the part of the said (*grantor*), at his own expense, to appear at any office of insurance in the city of London or Westminster, or procure and produce certificates or other vouchers or documents of his place of residence and state of health, when and as often as there shall be occasion, in order that the said (*grantee*) [his executors, administrators, or assigns,] shall or may insure any sum or sums of money on the life of the said (*grantor*); and also for the payment of any extra insurance which may be incurred by reason of the said (*grantor*) leaving the kingdom, or going into a military or naval capacity, or doing any other act or thing contrary to the rules of the said office in respect of common assurances on lives. AND in which said deeds or other instruments, or some or one of them, it is hereby also declared and agreed, shall be contained a proviso or agreement on the part of the said (*grantee*) [his executors, administrators, and assigns,] authorizing

ANNUITIES.

Agreement.

And clause of repurchase.

(1) If the property upon which the annuity is intended to be charged consist wholly or principally of houses, add, Insurance.

“ And also a covenant and agreement on the part of the said (*grantor*) [his heirs, executors, or administrators,] to insure all and singular the messuages, tenements, and buildings, which shall be so chargeable with the said annuity, from damage and loss by fire, in the full value thereof.”

(2) This reference to an insurance on the life of the grantor will of course be unnecessary, where the annuity is granted during the life of the grantee or of a nominee or nominees.

ANNUITIES.

Agreement.

FURTHER
WITNESS.Covenant by
grantee to pay
the remainder
of the purchase
money.Agreement to
be void on the
death of grantor.

and empowering the said (*grantor*) (1) at any time after the expiration of years from the date thereof, to repurchase and extinguish the said annuity, or yearly sum of £ , on payment of all arrears thereof, and the sum of £ , of such lawful money as aforesaid as a consideration for such repurchase, and upon giving to the said (*grantee*) [his executors, administrators, or assigns,] three calendar months' previous notice thereof, or payment of one quarter's annuity in lieu of such notice. AND THESE PRESENTS FURTHER WITNESS, that in pursuance of the aforesaid contract on the part of the said (*grantee*) and for the considerations hereinbefore expressed, he the said (*grantee*) [for himself, his heirs, executors, and administrators,] doth hereby covenant, promise, and agree with and to the said (*grantor*) [his executors, administrators, and assigns,] in the manner following, that is to say, that he the said (*grantee*) [his executors or administrators,] shall and will well and truly pay, or cause to be paid, unto the said (*grantor*), [his executors, administrators, or assigns] the said last mentioned sum of £ , at and upon the day and time hereinbefore appointed for payment of the same, upon having the said annuity or yearly sum of £ so secured as hereinbefore is mentioned, or hereby intended. PROVIDED ALWAYS, and it is hereby

Life of grantee.

(1) If the annuity be granted during the life of the grantee or nominees, add,

“ His heirs, executors, or administrators.”

declared and agreed by and between the parties **ANNUITIES.**
hereto, that in case the said (*grantor*) [*or* Agreement.
(*grantee*) or (*nominees*), as the case may be], shall
have departed this life, or the said (*grantor*)
[his heirs, executors, or administrators] do not so
secure the said annuity or yearly sum of £ ,
as aforesaid, on or before the said day of
, then these presents, and every clause
and thing herein contained, so far as respects
the payment of the said further or additional sum
of £ , and the grant of the said annuity or
yearly sum of £ , shall be utterly void
and of none effect, [and then and in such case
he the said (*grantor*) [his heirs, executors, or ad-
ministrators,] shall and will, within the space of
calendar months next thereafter well and
truly pay, or cause to be paid, unto the said
(*grantee*) his executors, administrators, and as-
signs, the said sum of £ , so now advanced
as aforesaid, together with interest for the same,
after the rate of £5 per cent. per annum, from the
date of these presents. AND it is hereby lastly **Expense of the**
declared and agreed, by and between the parties **securities.**
hereto, that the expense of these presents, and
of a counterpart thereof, and of the several se-
curities assigned, and all matters and things pre-
paratory or otherwise relating to the same, shall
be borne and paid by the said (*grantor*) [his exe-
cutors or administrators.] IN WITNESS, &c.

. An agreement to grant an annuity need not be memo- **Memorial.**
rialised; see *Jackson v. Leaver*, 3 Brow. Ch. Rep. 605; *Nield*
v. Smith, 14 Ves. jun. 491, and *ante*, INTRODUCTION.

ANNUITIES.

*Secured on
Freeholds.
(Full Form.)*

No. II.

Grant of an Annuity (1) (or yearly Rent Charge,) during the Life of the Grantor, chargeable upon an Estate of Inheritance in Fee-simple, with Demise to Trustee for a Term (2).

Variations where the Wife of the Grantor is a Party.

Where a Surety for the Grantor is Party.

Where the Grantor is seized in Fee-tail.

Where he is Tenant for Life only.

Where he is seized of a Moiety or other Portion only of the Estate.

Where Part of the Estate is Copyhold.

Where the Premises are part Freehold, and part Copyhold or Leasehold.

Where a Grantor took the Estate to himself and a Trustee to bar Dower.

Where there is an outstanding satisfied Term in a Trustee.

Where the Consideration for the Annuity is not Money

Validity of
annuities.

(1) The granting of annuities exceeding the rate of legal interest in consideration of the advance of money, although frequently iniquitous transactions in *foro conscientiae*, as proceeding from the avarice of the grantee, and the necessities of the grantor, are established not to be usurious or illegal, if *bonâ fide*, and not colourable only to hide a real loan at usurious interest; *Fountain v. Grimes*, Cro. Jac. 252, 1 Bulst. 36; *Chesterfield v. Jansen*, 2 Ves. 142, 1 Atk. 301, s. c. 1 Wils. 295, s. c.; *Murray v. Harding*, 2 Blac. Rep. 862, 3 Wils. 390, s. c.

(2) See the grant of a like annuity by *Lease and Release* to uses, *post*, No. IV.

paid down, but a Debt or Resignation of Business, &c. &c. **ANNUITIES.**

Where the Premises are in Mortgage.

Where they are subject to a former Annuity.

Where the Annuity is for the Life of the Grantee, or the Lives of Nominees.

Where for a Term of Years determinable on Lives.

Where the Annuity is granted by or to two or more Persons.

Where a Receiver is appointed, &c. &c. as in Margin below.

Secured on
Freeholds.
(Full Form.)

THIS INDENTURE, of parts, made the
day of [* in the year of
the reign, &c. and] in the year of our Lord
. BETWEEN (*the grantor*) (3) of, &c. **Parties.**

* Where brevity is particularly desired, such parts of the Brevity. precedent as are included within brackets may be omitted; but see Vol. I. No. XVI. n. (1).

(3) If the annuity be granted during the life of the grantee or Wife. of a nominee, and the wife of the grantor be entitled to dower out of the lands intended to be made chargeable with the payment of it, make her a party, by adding, "and , his wife;" but if the property be exclusively hers, independently of her husband, she alone may charge it with the annuity, *Essex v. Atkins*, 14 Ves. jun. 542.

If the grantor took the estate to himself and a trustee, or it be Trustee. necessary that any other trustee of the estate should concur in the grant, make such trustee a party of the second part.

If the grantor be tenant in tail only of the premises, intended Tenant in tail. to be made chargeable with the annuity, make a tenant to the præcipe a party of the second part, and see Vol. I. No. XXII. p. 297, n. (6).

ANNUITIES.

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Recital of
grantor's title.

Recital of
contract.

of the first part,† (*the grantee*) of, &c. of the second part, and (*the trustee*) of, &c.

a trustee named and appointed by and on the part of the said (*grantee*) for the purposes hereinafter mentioned of the third part. WHEREAS (4) [the said (*grantor*) is seised to him and his heirs in fee simple of the several messuages, lands, tenements, and hereditaments hereinafter described, free from incumbrances (except as hereinafter is mentioned) (5). AND WHEREAS] the said (*grantee*)

† The grantor must be of the age of twenty-one years at the time of his contracting for the purchase of the annuity, as it will otherwise be void, 53 Geo. III. c. 141, s. 8.

Surety.

If a surety for the grantor be required, which is, however, seldom done where the annuity is secured on real estates, see *ante*, INTRODUCTION, make such surety a party of the third part.

Receiver.

If the circumstances of the estate make it advisable that a receiver should be appointed of the rents and profits, make him a party of the fourth part.

Trustee.

(4) If the grantor took the estate to himself and a trustee for preventing dower, recite here the deed by which it is so limited to him, as *post*, rider (A).

Tenant in tail.

If the grantor be tenant in tail only of the premises, recite here the deed or will by which the estate tail was created, as in Vol. I. No. XXII. p. 300.

Tenant for life.

If he be tenant for life only, recite shortly the deed or will by which he derives his title, as in Vol. I. No. XXIII. p. 328.

Moiety, &c.

If he be entitled to a moiety or other portion only of the estate, see Vol. I. No. XXV. p. 382.

Copyholds.

(5) If part of the premises be copyhold, add,
“ And seised to him and his heirs, according to the custom of the manor of , of the customary or copyhold

hath agreed † with the said (*grantor*) for the purchase of an annuity, or clear yearly sum of £ , ‡ to be payable during the life (6)

ANNUITIES.

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lands and hereditaments hereinafter covenanted to be surrendered."

† If the annuity be granted in pursuance of a prior agreement in writing, say, Prior agreement.

"AND WHEREAS by articles of agreement, bearing date the day of , and made, or expressed to be made, between the said (*grantor*) of the one part, and the said (*grantee*) of the other part, the said (*grantor*) in consideration of the sum of £ , then paid, and of the further sum of £ , to be paid at a time therein mentioned, (being the day of the date of these presents) covenanted and agreed to grant to him the said (*grantee*) an annuity, or yearly sum of £ , to be charged upon the hereditaments and premises hereinafter described, and to be payable at the times, and upon the terms and conditions therein and hereinafter expressed." Recital of agreement for grant of annuity.

‡ With respect to the price to be paid for an annuity, it rests, Price. like other purchases, entirely with the parties, unless where it is so exorbitant as to induce a forcible presumption of fraud, or an undue advantage having been taken of the situation of the grantor, in which case a court of equity will give relief. See *Chesterfield v. Jansen*, 2 Blac. Rep. 862. 2 Ves. 142, s. c. 1 Atk. 301, s. c. 3 Wilks, 295, s. c. *Heathcote v. Paignon*, 2 Brow. Ch. Ca. 167. *Low v. Burchard*, 8 Ves. jun. 133, also 1 Fonbl. Eq. 247, n. (1), and Plowd. Ann. 282.

(6) If the annuity be granted for a term of years determinable on the decease of the grantor, &c. say, Years.

"For the term of years, if he the said (*grantor*) or (*grantee*) or (*nominees*) or the survivor or longest liver of them shall so long live."

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and for the benefit of the said (*grantor*, or *grantee*) (7) (subject only to such privilege of repurchase as hereinafter is contained), at the price or sum of £ , and it has been agreed that the annuity shall be secured by the {bond (8) of the said (*grantor*), and a war-

Nominees.

If the annuity be intended to be granted for the lives of nominees, say,

“ For the joint lives of (*the nominees*) of, &c. and the life of the survivor, or longest liver of them.”

53 Geo. III.

(7) By the 53d Geo. III. c. 141, s. 4, it is enacted that, “ in every deed, bond, instrument, or other assurance whereby any annuity or rent-charge shall be granted, or attempted to be granted, for one or more life or lives, or for any term of years, or greater estate determinable on one or more life or lives, where the person or persons to whom such annuity or rent-charge shall be granted or secured to be paid, shall not be entitled thereto beneficially, the name or names of the person or persons who is or are intended to take the same beneficially shall be inserted in like manner as is required in the enrollment thereof, (which see *post*), otherwise every such deed, &c. shall be void.”

Except (s. 3) such annuity shall be granted by or to or for the benefit of any company exceeding in number ten persons, formed for the purpose of granting or purchasing annuities, in which case it shall be sufficient to describe such company by the usual firm or name of trade.

Bond.

(8) Although judgment may be entered up upon a warrant of attorney alone, without being accompanied by a bond, (and such judgment will be of equal efficacy on whatever security it is obtained) ; yet as this cannot be done until a debt shall arise by some payment of the annuity being in arrear (and before which time other incumbrances may have attached upon the grantor's estate) nor if the grantor should previously die (which would vacate the authority), whilst it may be immediately, or

rant of attorney to confess judgment there-
 on} (9), and shall also be chargeable upon the
 lands and hereditaments hereinafter described,
 and otherwise secured as hereinafter is expressed
 (10). [AND WHEREAS it was agreed (11) at the

ANNUITIES.

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at any time, entered up upon the penalty of the bond (which is a present debt); and as a bond, being a specialty debt, will also have priority of debts resting on simple contract only, and by the 49 Geo. III. c. 121, s. 2, will be good notwithstanding any prior act of bankruptcy, if without notice, and no commission issue within two calendar months; and as a warrant of attorney binds the personal representatives only and not the heirs, it seems in most cases desirable that a bond should be taken, (particularly if judgment is not to be entered up until default,) unless where it is intended that the land only, and not the personal estate of the grantor, should be liable to process for the payment of the annuity. And vid. Lit. s. 146, 220; also *post*.

(9) If no bond be intended to be given, say, instead of the words within braces, No bond.

“To be secured by the warrant of attorney of the said (*grantor*) to confess judgment against him in an action of debt for the sum of £ ,” (*double the consideration money*).

(10) If the mortgagor have obtained a license for demising the copyhold part of the premises, which will be necessary, add, Copyholds.

“AND WHEREAS the said (*grantor*) is authorised to demise the said customary, or copyhold premises, by virtue of a licence or consent, under the hand of the lord of the said manor, bearing date the day of .”

And see Vol. IV. No. XVII. p. 241, n. (2).

(11) This agreement need not to be noticed either under the Expenses, &c.

ANNUITIES. time of entering into the said contract, that the lawful commission for procuring the said sum of £ , and the expense of preparing, executing, and memorialising the several securities for the said annuity, should be paid by the said (*grantor*) at the time of the execution thereof (12).]

Recital of bond. AND WHEREAS in part performance of the said agreement, the said (*grantor*) hath accordingly executed the said bond {and also warrant of attorney (13) both} bearing even date with these

old, (see *Mouys v. Leake*, 8 Durnf. and E. 411. *Phillips v. Crawford*, 9 Ves. jun. 214,) or late Annuity Act, and is therefore useless, unless to prevent any misunderstanding between the parties on the subject of the commission, &c.

Surety.

(12) If there be a surety for the grantor, say,

“AND they the said (*grantor*) and (*surety*) have, by their joint bond or obligation in writing,” &c. *as above*.

Warrant of attorney.

(13) “It is very usual, in order to strengthen a creditor’s security, for the debtor to execute a warrant of attorney to a nominee of the creditor, empowering him to confess a judgment by *nihil dicit*, *cognovit actionem*, or *non sum informatus*, in an action of debt to be brought by the creditor against the debtor for the sum due, which judgment when confessed (if the same be certain), is absolute, complete, and binding, provided the same be regularly docketed, according to the directions of 4 and 5 W. and M. c. 20.” 3 Blac. Com. 397, and see *ante*, p. 14, n. (8). And in the case of an annuity a warrant of attorney is particularly proper, as it not only affords the grantee a speedy and effectual means of payment, by entering up, or confessing judgment, and taking out execution for the arrears, but it also gives to the grantor, or any person claiming under him, a right of applying at any time to the original jurisdiction of the court to vacate the warrant of attorney, or set aside the judgment or

presents (14). Now THIS INDENTURE WITNESSETH; **ANNUITIES.**
that in further performance of the said agreement,

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execution for any defect in the deed or memorial, *D. Bolton v. Williams*, 4 Brow. Ch. Rep. 297. 2 Ves. jun. 154, s. c. *Thurkill v. Wallace*, 4 Term. Rep. 695, n. *Symonds v. Cobourne*, 1 Bos. and Pul. 482, whilst the remedy given to him by the annuity act itself (s. 4.) to have the securities given up to be cancelled on a summary application to the court, cannot be had recourse to until an action has been brought, or judgment entered up by the grantee for payment of the arrears, and is then, at law, confined to the grantor himself, (see the cases above cited). See *Bromley v. Holland*, 6 Ves. jun. 610; see also *WILDE'S SUPPLEMENT*, Nos. CXCIV. and CXCV. in *notes*.

WITNESS that
in consideration
of the money
paid.

If there be two or more grantors, there should be as many distinct warrants of attorney, as a several execution cannot issue against either of the parties alone upon a joint judgment, nor several judgments be entered up against them on a joint warrant; and as the warrant is filed when judgment is entered up, it cannot afterwards be had for the purpose of entering up judgment against the other. **Several grantors.**

(14) Or this may (as it usually but unnecessarily is) be more fully expressed thus :

“ AND WHEREAS, in pursuance and part performance of the said agreement on the part of the said (*grantor*), he hath this day executed [*or it is intended that immediately after the sealing and delivery of these presents he shall execute*] a bond or obligation in writing in the penalty of £ (*double the consideration money*) bearing, or intended to bear, even date with these presents, with a condition thereunder [*or to be thereunder*] written, for making void the said bond on payment of the said annuity, or yearly sum, at the times and in the manner therein and hereinafter mentioned. And also a warrant of attorney bearing, or intended to bear, even date with the said deed, authorising one or more attorney or attornies of one of his Majesty's courts at Westminster to **Recital of bond, &c.**

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and in consideration of the sum of £ (15)
of lawful money of that part of the United King-
dom of Great Britain and Ireland called England,
to the said (*grantor*) well and truly paid by the
said (*grantee*) (16) at or immediately before the

confess and enter up judgment against him in an action of
debt thereupon, for the said sum of £ and costs of
suit."

The difference between having the bond and warrant of at-
torney executed before or after the execution of the deed of
grant, (according to the variations within brackets), is, that in
the first case the bond and judgment are considered to be the
primary security for the annuities, and the grant and covenants
only secondary; and *e converso* in the other case, *sed vid. ante*,
INTRODUCTION.

What a suf-
ficient consid-
eration.

(15) See *ante*, n. (10). The consideration for the purchase
of an annuity need not be money (and see *post*), as the same
consideration which will support the purchase of any other kind
of property (as blood, services, an antecedent debt due to the
grantee, or to a third person, or the like,) will be equally suf-
ficient for that of an annuity, (see the Act cited in the next note)
and the same unworthy motives which will vitiate any other
contract, as considerations *pro turpi causâ*, will also affect
annuity contracts; see *Harrington v. Du Chattel*, 1 Brow. Ch.
Rep. 125; *Cole v. Gibson*, 1 Ves. 506; but the amount of the
consideration is not material unless it be so small as to induce
a presumption of fraud or imposition on the grantor; see
Underhill v. Horwood, 10 Ves. 209; *Pickett v. Loggerin*, *ib.*
215.

Consideration
to be set out.

(16) It was required by the act of 17 Geo. III. c. 26, sec. 3,
(except in particular cases) "That in every deed, instrument, or
other assurance by which an annuity or rent charge shall be
granted or attempted to be granted, the consideration money
really and *bond fide* paid, (which shall be in money only) and

sealing and delivery of these presents (*or otherwise as the case may be*) (17) the receipt whereof, [and that the same is in full for the purchase of the annuity or yearly sum of £ hereinafter granted or secured], the said (*grantor*) doth hereby acknowledge, [and of and from the same, and every part thereof, doth acquit, release, exonerate, and for ever discharge the said (*grantee*) his executors and administrators, by these presents], He the said (*grantor*) (18) HATH given, granted, bargained, and sold, and by these presents DOTH [for himself, his heirs (19), executors, and

ANNUITIES.

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The grantor
grants, &c. the
annuity.

also the name or names of the person or persons by whom, and on whose behalf, the same or any part thereof shall be advanced, shall be fully and truly set forth and described in words at length." But since the Act of 53 Geo. III. c. 141, neither the mode of payment of the consideration money, nor any other of these particulars is requisite in the grant of annuities, except that the consideration must, it is presumed, by the late stamp act of 48 Geo. III. c. 149, s. 22, (the transaction being in the nature of a purchase) be set out in words at length; see *ante*, Vol. I. No. XV. p. 123, n. (5).

(17) If the consideration be other than money paid down at the time of the execution of the assurances, see variations *post*, rider (A). Banker's check.

(18) If the wife of the grantor be a party, say, Wife.

"They the said (*grantor*) and his wife, HAVE and each of them HATH given," &c.

(19) The grantee will not be entitled to a writ of annuity, or "Heirs." other personal remedy against the heirs of the grantor, although he should leave assets, unless he be expressly named; for the

ANNUITIES. administrators,] give, grant, bargain, and sell unto the said (*grantee*) his executors, administrators, and assigns (20), one annuity, or yearly rent charge of £ of lawful money of that part of the United Kingdom of Great Britain and Ireland called England, clear and free of and from all deductions and abatements whatsoever, to be issuing and payable out of, and charged and chargeable upon ALL and singular the messuages, lands, tenements, and hereditaments hereinafter demised or described (21), or intended so to be, and out of and from all and every their rights, members, and appurtenances, To HAVE,

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law will not presume an intention to bind the heir in a personal contract, Co. Lit. 144, n. (2); and see *Bodwell v. Bodwell*, Cro. Car. 170. But in the case of a corporation, which has perpetual continuance, the successors will be bound, although not named; Sir Thomas Wrath's case, Plow. 455.

Life of grantee. (20) If the annuity be for the life of the grantee only, say, "And his assigns only," instead of "executors, administrators, and assigns," throughout the precedent.

Assigns. The word assigns was formerly deemed essential in the grant of a personal annuity in order to render it assignable, see Perk. s. 101; but it was afterwards held otherwise. Maund's Ca. 7 Co. 28. b. Het. 80. and see Co. Lit. 144. n. (1).

Copyholds. (21) If part of the premises be copyhold, add

"And covenanted to be surrendered respectively."

As to what premises may be chargeable with an annuity, by persons possessing life interests only, see *ante*, Vol. V. No. VIII. p. 190, n. (1).

HOLD, receive, perceive (22), and take the said ANNUITIES.
 annuity or clear yearly rent charge of £
 unto and by him the said (*grantee*) his executors,
 administrators (23), and assigns, from henceforth,
 for and during the natural life (24) of the said
 (*grantor*) [*or grantee*] [and to and for the only use
 and benefit of him the said (*grantee*), his exe-

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 Freeholds.
 (Full Form.)

(22) This word is said to operate as a limitation of the rent “Perceive.” charge to the grantee; if therefore the rent charge be badly created or granted, or the fund out of which it is payable be insufficient, and the person of the grantor is not expressly charged, yet it seems he will be bound to the payment of it as an annuity, by force of the word “perceive.” See Brook. Ab. title “Grantee,” pl. 4, and cases cited 5 Vin. Ab. 507.

(23) An annuity or rent charge for life will be considered as real estate, and go to the heir of the grantee, unless expressly limited to his personal representatives, *Longuet v. Scawen*, 1 Ves. 403. Rent charge a freehold.

(24) If the annuity be granted during the life of the grantee, omit the words “executors and administrators.” Life of grantee.

If the annuity be granted to two or more persons as tenants in common, say, Several grantees.

“Unto and by them the said (*grantees*) as tenants in common, and to their respective executors, administrators, and assigns, from henceforth for and during,” &c. *as above*.

If the grantees are to be joint-tenants of the annuity, say,

“Unto them the said (*grantees*) as joint-tenants, and their assigns, and to and by the survivor or longest liver of them, his executors, administrators, and assigns.”

If the annuity be granted during the lives of nominees, say, Nominees.

“For and during the term of the joint natural lives of the

ANNUITIES.

Secured on
Freeholds.
(Full Form.)

When and
where payable.

cutors, administrators, and assigns (25)], and to be payable by four equal quarterly payments between the hours of ten and twelve of the clock in the forenoon of the several days next hereinafter mentioned (that is to say) the day of , the day of , the day of and the day of in every year, in or at the common dining hall of the Inner Temple, London (26), unless the same shall be elsewhere sooner demanded, and also a due and

Years deter-
minable on
lives.

said (*nominees*) and the life of the survivor or longest liver of them, and up to the day of the decease of such survivor."

Or the annuity may be granted for a term of years determinable upon lives, say,

"For the said term of years, if the said (*grantee*) or (*nominees*) or any or either of them shall so long live."

And this has by some been thought an eligible mode, on account of doubts which have been entertained as to rents *pur autre vie* going to the personal representatives; see *Surry v. Dyer*, *Amb.* 139. 2 *Blac. Com.* 260.

(25) By the late act of 53 Geo. III. c. 141, sec. 4, it is required, that every assurance by which any life annuity shall be granted, where the grantee is not beneficially entitled thereto, to state the person or persons who is intended to take the same beneficially; where, therefore, the grantor is not so entitled, say,

"But for the proper use and benefit of A. B. of," &c.

(26) If no place of payment be mentioned, the annuity must be demanded of the person of the grantor (who may not be to be found) unless where it is chargeable upon land, &c. in which case a demand there will be sufficient; see *ante*, Vol. V. p. 39, n. (31).

just proportion (27) of the said annuity for or in respect of any period of time which may elapse between either of the said days of payment, and the day of the decease of the said (*grantor*) [or (*grantee*)] (28) and the first of the said payments to be made on the day of now next ensuing [if he the said (*grantor*) [or (*grantee*)] shall be then living, but if not, then a proportionable part thereof immediately upon his decease (29)]. AND the said (*grantor*) for himself, his heirs, executors, and administrators, doth hereby covenant and declare, to and with the said (*grantee*) his executors, administrators, and assigns, in the manner following (that is to say),

ANNUITIES.

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Freeholds.
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Covenant to pay
annuity.

(27) A rent charge not being apportionable, it would without this stipulation cease on the quarterly or other day of payment, next preceding the decease of the person for whose life it was granted; see *Pearly v. Smith*, 3 Atk. 261; but *quære*, where it is a proper annuity chargeable on the person only, and not the lands of the grantor; and see *Edwards v. Countess of Warwick*, 2 P. Wms. 171. *Hay v. Palmer*, 2 ibid. 502. *Howell v. Hanforth*, 2. Black. Rep. 1016.

Annuity not ap-
portionable.

(28) If the annuity be granted during the lives of nominees, say,

Nominees.

“Or the survivor or longest liver of them the said (*nominees*).”

(29) If the annuity be granted for the lives of nominees, say,

Nominees.

“If they the said (*nominees*) or any or either of them shall be then living, and if not, then a proportionable part thereof, immediately upon the decease of the survivor or longest liver of them, up to the day of his or her decease.”

ANNUITIES. that he the said (*grantor*), his heirs, executors, or administrators, shall and will well and truly pay (30), or cause to be paid, unto him the said (*grantee*) his executors, administrators, and assigns, the said annuity, or yearly sum of £ , during the natural life of him the said (*grantor*) [*or grantee*] (31), at and upon the days and times, and in the manner hereinbefore appointed for payment thereof, and according to the true intent and meaning of these presents. AND ALSO that in case the said annuity, or yearly sum or any part thereof shall at any time or times be in arrear and unpaid for the space of twenty-one days next after either of the days or times whereupon the same is hereinbefore appointed to be paid (being law-

*Secured on
Freeholds.
(Full Form.)*

Power of distress if annuity in arrear forty days.

Land only to be chargeable.

(30) If it be intended that the land only of the grantor shall be chargeable with the payment of the annuity, omit this covenant for payment; but if the person also is meant to be made liable, it is essential that it should be inserted, as no action (except a writ of annuity, which will not recover arrears after the death of the grantor, Brook. Ann. pl. 32, and will discharge the land), it seems, will lie for an annuity, unless it be expressly provided for; see Doct. and Stud. 90. By means of this covenant the grantee will have a personal remedy against the grantor, although the real security should fail, or the grantor become a bankrupt, or be discharged under an insolvent act; see Cottrell v. Hooke, 1 Doug. 97; and see Lit. s. 220; Dy. 222, a.

Nominees.

(31) If the annuity be granted during the lives of nominees, say,

“ During the joint natural lives of the said (*nominees*) and the natural life of the survivor, or longest liver of them.”

fully demanded) (32), then, and from time to time, as often as the same shall happen, it shall be lawful for the said (*grantee*) his executors, administrators, and assigns, [or his or their lawful attorney or attornies], to enter into and upon all and singular or any part of the hereditaments and premises hereby charged with the payment thereof, (or intended so to be), and there to distrain (33) for the same, and for such future or other arrears, if any, thereof as may become due whilst in possession under such entry, and

ANNUITIES.

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(Full Form.)*

(32) An entry for arrears of a rent charge cannot be made without a previous demand, unless the contrary be stipulated, Co. Lit. 201, b. 5 Co. 40, b. Sed vid. 4 Geo. II. c. 28, s. 2. Gilb. Rents, 73. Demand.

(33) Notwithstanding that a power of distress is always expressly reserved, yet it should seem not to be absolutely necessary, for without a clause of distress, it will be a rent seck, Lit. sec. 217, 218; Co. Lit. 144, a. for which a distress is given by 4 Geo. II. c. 28, s. 5; and see 3 Blac. Com. p. 6; but as a distress is a more speedy and certain remedy than an action on the covenant or for debt, it is, to prevent doubt, generally given; and it may be exercised, although the term usually created as a further security be vested in the grantee himself; see *Fairfax v. Gray*, 2 W. Blac. 1326; as, however, no distress can be made unless the premises are in the occupation of the grantor, or some person claiming under him *subsequently* to the grant of the annuity, 1 Roll. Ab. 669, pl. 31. unless for rent then or afterwards becoming due, *Umphery v. Damyon*; 1 Bulstr. 181; *Birch v. Wright*, 1 Durnf. and E. 378; this power, although expressly given, is not always an available remedy. Distress.

Where any part of the premises are copyhold, the power of distress is usually restricted to the freeholds; but this is an unnecessary and improper precaution; see *post*, No. VI. notes. Copyholds.

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(Full Form.)*

Power of entry
in case of de-
fault for forty
days.

cause the distress which shall be there taken, to be appraised and sold, or otherwise disposed of, as in the case of a distress made for rent in arrear between landlord and tenant, [and as if the said yearly sum was an annual rent reserved upon or by a lease for years], to the end and intent that all such arrears of the same annuity, together with all costs, damages, expenses, and reasonable charges attending or occasioned by such distress, may be thereby or otherwise fully paid or satisfied. AND further, that in case the said annuity, or any part thereof, shall be in arrear and unpaid by the space of forty days next after either of the days or times hereinbefore appointed for payment thereof, then and from time to time as often as the same shall happen, it shall be lawful for the said (*grantee*) his executors, administrators, and assigns, (although no demand shall have been made thereof,) to enter (34) into and upon all or any part, in the

Power of entry.

(34) By virtue of this power of entry, and the previous estate in the grantee, the grantee may immediately on default made in payment of the annuity at the time mentioned in the deed, bring an ejectment, and retain possession against the grantor until the arrears are satisfied; see Lit. sec. 327. Co. Lit. 202, n. (3). *Jemmot v. Cooley*, 1 Lev. 170. Sir T. Raymond, 135, 158. 4 Geo. III. c. 28, s. 2. 1 Saund. Rep. 287, n. 1 Burr. 620. 7 Durnf. and E. 117. 1 *ib.* 378. Gilb. on Rents, 139. As to the difference between this entry and an entry under an use, see *post*, No. IV.

But as a right of entry always supposes a prior estate in the

name of the whole of the said hereditaments and premises, and hold and retain the same, and receive and take the rents, issues, and proceeds thereof, for his and their own use (35), until all arrears of the said annuity or yearly sum, whether become due before, or subsequently to such entry, together with all costs, damages, expenses, and reasonable charges attending or occasioned by the non-payment of the same annuity, shall thereby or otherwise be fully paid or satisfied; and every of which entries shall be without impeachment of waste (36), other than wilful and

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person to whom it is given (for it would be nugatory to enter without a right to hold and receive the rents and profits), it must be given to the grantee himself, and not to a stranger; see *Smith v. Parkhurst*, 3 Atk. 139.

This power of entry should not, however, be made to extend to such part of the premises, if any, as are copyhold; see *Gilb. Ten.* 181. and *post*, No. VI. notes.

(35) If the estate intended to be made chargeable with the payment of the annuity be already in mortgage, say,

“ But subject, nevertheless, to the payment of the said principal sum of £ so secured thereon by way of mortgage as aforesaid, and the interest thereof.”

If subject to a former annuity, say,

Prior annuity.

“ But subject, nevertheless, to the said annuity, yearly rent charge, or annual sum of £ heretofore charged upon the said premises as aforesaid, and the powers and remedies for the same, during the continuance thereof.”

(36) Under an entry made by virtue of the above power, the grantee would not be authorised to cut, to fell trees, or take

Waste.

ANNUITIES. malicious waste. AND THIS INDENTURE ALSO

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Freeholds.
(Full Form.)*

FURTHER WIT-
NESS, that for
better securing
the annuity.

The grantor de-
mises.

WITNESSETH (37) that in further pursuance of the
aforesaid agreement and for the consideration
hereinbefore expressed, [and in consideration of
the sum of ten shillings of lawful and current
money to the said (*grantor*) in hand paid by the
said (*trustee*) the receipt whereof is hereby ac-
knowledge[d,] HE (38) the said (*grantor*) at and by

any other than the ordinary proceeds of the land, unless it was
given expressly unimpeachable for waste. *Jemmot v. Cooley*,
1 Lev. 170.

Outstanding
term.

(37) If there be an outstanding satisfied term attendant upon
the inheritance, such term (if its circumstances will admit of it)
may be here assigned to a trustee for the annuitant, instead of a
term being raised expressly for that purpose; and in some cases,
as where there is a suspicion of the lands being subject to latent
incumbrances, this may be a preferable mode; see the form of
such assignment, *post*, rider (G).

Wife.

(38) If the wife of the grantor be a party, say,

“ They the said (*grantor*) and his wife HAVE, and
each of them HATH granted,” &c. *as above*.
But see *ante*, Vol. I. p. 5, n. (2).

Trustee.

If the estate to be charged with the payment of the an-
nuity be in the grantor and his trustee, and the estate of the
trustee be such as to make it requisite that he should concur in
the charge, add,

“ And [for and in consideration of the sum of 5s. of like
lawful money by the said (*grantee*) in hand at the same time
paid to the said (*trustee*) the receipt whereof is hereby ac-
knowledge[d,] He the said (*trustee*) at the request and by the
direction of the said (*grantor*) (testified by his being a party
to, and executing these presents), but so far only as relates
to the interest of him the said (*trustee*) of and in the

the request and nomination of the said (*grantee*) **ANNUITIES.**

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Freeholds.
(Full Form.)*

messuages, lands, tenements, and hereditaments hereinafter described, HATH given, granted, bargained, and sold, and by these presents, DOTH," &c. *as above*.

If the grantor took the estate to himself and a trustee, to bar dower, say, Estate in grantor and dower-trustee.

"HE the said (*grantor*) pursuant to, and in exercise of the power and authority given or reserved to him, in or by the hereinbefore in part recited indenture of release, and by virtue thereof, [and of all and every or any other power or powers, authority or authorities in any wise, enabling him in this behalf,] and at the request and by the nomination of the said (*grantee*) testified by his being a party to, and signing and sealing these presents, HATH directed, limited, and appointed, and by this present deed or instrument in writing, by him sealed and delivered in the presence of the two credible persons whose names are, or are intended to be, hereupon indorsed, as witnesses hereto, DOTH absolutely and irrevocably direct, limit, and appoint, that all and singular the messuages, lands, tenements, hereditaments, and premises hereinafter particularly described and mentioned, or intended to be hereinafter granted and demised, shall remain, continue, and be, and that the said hereinbefore in part recited indenture of lease and release, and all other assurances heretofore made, of the same hereditaments, or any part thereof, shall be and enure unto the said (*trustee*) for such term or number of years, upon such trusts, and to and for such ends, intents, and purposes, as are hereinafter expressed, demised, or declared of or concerning the same. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, and for the further, better, and more perfectly and satisfactorily conveying and assuring the said messuages, lands, tenements,

Grantor appoints.

Grantor and trustee grant and demise.

ANNUITIES. (39) HATH granted, bargained, sold, and demised, and by these presents DOTH grant, bargain, sell, and demise, unto the said (*trustee*)

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Freeholds.
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and hereditaments unto the said (*trustee*) his executors, administrators, and assigns, upon the trusts, and to and for the ends, intents, and purposes hereinafter mentioned, [and also for and in consideration of the sum of ten shillings of like lawful and current money in hand, at the time aforesaid, well and truly paid by the said (*trustee*) to the said (*grantor*) and (*grantor's trustee*) respectively, the receipt whereof is hereby acknowledged,] THEY the said (*grantor*) and (*grantor's trustee*) at and by such request and nomination, and so testified as aforesaid [HAVE and each of them HATH granted, bargained, sold, and demised, and by these presents] Do, and each of them DOTH grant, bargain, sell, demise, and confirm unto the said (*trustee*) his executors, administrators, and assigns, ALL," &c. *as in the text.*

Tenant in tail. (39) If the grantor be tenant in tail only of the premises charged with the payment of the annuity, add,

" And for docking, barring, and destroying all estates tail of and in the same messuages, lands, tenements, and hereditaments, and all remainders and reversions expectant or depending thereupon, and all conditions and collateral limitations (if any) annexed to or affecting the same, [and in consideration of the sum of 10s. of such lawful and current money aforesaid, to the said (*grantor*) in hand at the same time paid by the said (*tenant to the præcipe*) the receipt whereof is hereby acknowledged,] HE the said (*grantor*) HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant, bargain, sell, alien, and release, unto the said (*tenant to the præcipe*) and his heirs, ALL," &c. *as above.*

(40), ALL, &c. (41), or howsoever otherwise, the said messuages, lands, tenements, and hereditaments, or any of them, or any part thereof, now are, or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished (42), together with (43) all [houses (44), out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights, and privileges of common of every kind, and all] and all manner of [other] rights, privileges, easements, advantages, appen-

ANNUITIES.

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Parcels.

General appurtenances.

(40) If the conveyance be of a moiety or other portion only of the estate, see Vol. I. No. XXVI. p. 385. Moiety, &c.

(41) Insert here an accurate description of the lands, &c. intended to be demised, by their ancient and present name, situation, tenancy, &c.; see Vol. I. No. XV. p. 128, n. (13), 405, n. (†). And for descriptions applicable to different kinds of real property, see INDEX, *voce* PARCELS. Parcels.

(42) If any part of the lands intended to be demised be copyhold and intermixed with the freeholds, and the grantor have no licence to demise them, it may be added here for precaution sake, Copyholds.

“ Save and except out of the said premises such part or parts thereof, if any, as is or are of copyhold, or customary tenure.”

(43) If the conveyance be of a moiety, or other portion only of the estate, see Vol. I. No. XXVI. p. 385. Moiety, &c.

(44) See general words applicable to different kinds of real property, INDEX, *voce* GENERAL WORDS. General words.

ANNUITIES.

*Secured on
Freeholds.
(Full Form.)*

Grant of title
deeds.

To HOLD to the
trustee for the
term of 500
years.

dances and appurtenances whatsoever, to the same hereditaments and premises belonging, or in any wise appertaining, and all and every the yearly and other rents, issues, and proceeds thereof. [And all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity of the said (*grantor*) in, to, out of, upon, or respecting the same hereditaments and premises, or any part thereof [together with all deeds (45), muniments, writings, and evidences whatsoever, which in anywise relate to the same premises, or any part thereof, and which now are, or at any time hereafter shall or may be in the possession, custody, or lawful power of him the said (*grantor*), his heirs, executors, or administrators, without action or suit, or action at law or in equity. To HAVE AND TO HOLD the (46) messuages, lands, tenements, hereditaments, and all and singular other the premises hereby granted and demised, or otherwise assured, or intended so to be, [with their and every of their appurtenances] (47) unto

Deeds.

(45) The possession of title deeds is not incident to the estate of an annuitant, and should therefore be expressly granted, *Harpur v. Faulder*, 4 Mad. 129.

Moiety, &c.

(46) If the conveyance be of a moiety or other portion only of the estate, see Vol. I. No. XXVI. p. 385.

Copyholds.

(47) If part of the premises be copyhold, and no licence to obtain them be obtained, say,

“ Save only and except such part or parts thereof as is or are of copyhold or customary tenure.”

and by him the said (*trustee*) (48) his executors, administrators, and assigns, from the day next

ANNUITIES.

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Freeholds.
(Full Form.)*

(48) If the grantor be tenant in tail only of the premises charged with the payment of the annuity, say,

Tenant in tail.

“Unto and to and for the use and behoof of the said (*tenant to the præcipe*) his heirs and assigns for ever. To the intent that he the said (*tenant to the præcipe*) may become and be a perfect tenant to the freehold of all and singular the same messuages, lands, tenements, hereditaments, and premises, with their and every of their rights, members, appendages, and appurtenances, in order and to the intent that one or more common recovery or recoveries, with double voucher, may forthwith at the expense of the said (*grantor*) be had and suffered of the same premises, by proper and sufficient names and descriptions upon a writ or writs of entry, *sur disseisin in le post*, in which the said (*grantee*) shall demand against the said (*tenant to the præcipe*) who shall vouch to warranty the said (*grantor*) who shall vouch the common vouchee, in such manner as is usual in like cases, so that judgment may be given to the said (*grantee*) to recover the said messuages, lands, tenements, and hereditaments hereby conveyed, or intended so to be, against the said (*tenant to the præcipe*) and for the said (*tenant*) to recover in value against the said (*grantor*), and for the said (*grantor*) to recover in value against the common vouchee, and that execution may be awarded and seisin had upon such recovery or recoveries according to the usual course in like cases. And it is hereby directed, declared, and agreed, by and between the parties to these presents, as far as they respectively are interested, that after the recovery or recoveries hereby agreed to be suffered, shall be suffered and perfected, the same and all other recoveries suffered and to be suffered of the same messuages, lands, tenements, and hereditaments, or any of them, either

Uses of recovery.

ANNUITIES. before the day of the date of these presents, for the complete term or period of five hundred years thence next ensuing (49), without impeachment of or for any manner of waste, other than wilful

*Secured on
Freeholds.
(Full Form.)*

alone or together with other lands or hereditaments, shall, as to and concerning the messuages, lands, tenements, and hereditaments hereinbefore released, or otherwise conveyed or intended so to be, with the appurtenances, be and enure TO THE USE of the said (*trustee*) his executors, administrators, and assigns, from [the day next before] the day of the date of these presents for and during the full and complete term or period of 500 years thence next ensuing, without impeachment of or for any manner of waste, other than wilful and malicious waste. But nevertheless upon the trusts, and to and for the several ends, intents, and purposes, and under and subject to the several provisos, declarations, and agreements, hereinafter declared or expressed concerning the same, and from and immediately after the determination of the said term of 500 years, and in the mean time subject thereto, and to the trusts thereof TO THE USE of the said (*grantor*) his heirs and assigns for ever. And it is hereby declared and agreed, by and between the said parties hereto, that he the said (*trustee*) his executors, administrators, and assigns, shall stand possessed of and interested in the said messuages, lands, tenements, and hereditaments, comprised in the said term of 500 years, UPON TRUST to permit and suffer," &c. *as above*.

Tenant for life. (49) If the grantor be tenant for life only of the estate to be charged with the payment of the annuity, add,

" If he the said (*grantor*) shall so long live."

And omit the words " without impeachment of waste," unless the estate to the tenant for life be so.

or malicious waste (50). [YIELDING AND PAYING ANNUITIES. therefore yearly and every year during the said term the rent of one pepper-corn, if lawfully demanded (51).] But nevertheless upon the trusts, and to and for the ends, intents, and purposes, and under and subject to the provisos, declarations, and agreements hereinafter declared or expressed concerning the same (52), that is to say, UPON TRUST for better securing the payment of the said annuity or yearly rent charge of £ at the times and in the manner hereinbefore appointed for payment thereof, but nevertheless to permit and suffer him the said (*grantor*) his heirs and assigns, to receive and retain the rents, issues,

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Freeholds.
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Upon trust to
permit the
grantor to take
the rents, &c.
till default in
payment.

(50) A tenant for years is impeachable for waste, unless expressly exempted. Waste.

If the premises are subject to a subsisting mortgage, add, Mortgage.

“ Subject, nevertheless, to the said in part recited indenture of mortgage, and to the payment of the principal and interest money thereby secured as aforesaid.”

If to a former annuity, add, Prior annuity.

“ And also to the said annuity or yearly rent charge of £ , so charged thereon as aforesaid.”

(51) See *ante*, Vol. V. p. 140, n. (1).

(52) If the premises consist principally of houses or other buildings, the grantor should insure previously to the execution of the deed, and assign the policy; see the form of such an assignment, *post*, rider (D), and *ante*, Vol. V. p. 87; see also *post*, p. 46, n. (64). Insurance.

If any part of the premises intended to be chargeable with the annuity be leasehold, add here a further witness similar to that *post*, No. VII. Leaseholds.

ANNUITIES.

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Freeholds.
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Then if annuity
in arrear for 60
days, in trust
to lease or mort-
gage.

and annual proceeds of the said hereditaments and premises, until default shall be made in payment of the said annuity, or yearly rent charge, or of some other the sum of money, or in performance of some or one of the covenants or agreements hereinafter contained on the part of him the said (*grantor*) his heirs, executors, or administrators, to be paid, performed, or observed respectively.

AND in case the said annuity or yearly rent charge of £ or any part thereof, shall happen to be in arrear and unpaid by the space of sixty days next after any of the days or times hereinbefore appointed for payment thereof, or default shall be made in payment of any other sum of money, or in performance or observance of any or either of the covenants or agreements hereinafter contained, which by or on the part of the said (*grantor*) his heirs, executors, or administrators, ought to be paid, performed, or observed respectively, (and of which default any notice or declaration in writing of or by the said (*grantee*) his executors, administrators, or assigns, for that purpose made or given under his or their hand or hands, shall be and be deemed sufficient evidence;)

UPON FURTHER TRUST THEN, and in every or any such case or cases, (although no legal or other demand or request of or for such payment, performance, or observance shall have been made,) he the said (*trustee*) his executors, administrators, or assigns, shall and do, or lawfully may, by and out of the rents, issues, and profits of all and sin-

gular, or any part of the said hereditaments and premises, [or by bringing actions against the tenants thereof for the time being for recovering of any rent then in arrear (53)] or by making entries upon the said premises, or by demising or leasing the same or any part thereof for any term or number of years, either absolutely or determinable upon or with any life or lives, and either at rack or any other rent or rents, and either at or with or without any fine, premium, or gift in lieu of any such rent or rents, or at or without any request in writing of the said (*grantee*) his executors, administrators, or assigns, by mortgaging the whole or any part of the same premises, for all or any part of the said term of 500 years, and by executing all necessary and proper deeds and assurances requisite for that purpose, or by the fall and sale of timber growing upon the said premises, or any part thereof, or by all and every, or any one or more of the said ways and means, or by any other lawful ways and means whatsoever, at his or their discretion, to raise and obtain such sum and sums of money as he or they in his or their discretion shall think fit, in order to pay and satisfy (54) the said annuity, yearly

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(53) This the grantee is entitled to do on giving notice of his interest, *Birch v. Wright*, 1 Durnf. and E. 378. Actions.

(54) If the premises are in mortgage, say,

Mortgage.

“ In the first place to pay and satisfy all such sum or sums of money, as shall be then due or in arrear for or in respect of interest for or upon the said sum of £ so secured on the said premises by way of mortgage as aforesaid, unless the said sale or disposition shall be made subject

them, one calendar month's notice under the hand of the said (*trustee*) his executors, administrators, or assigns, THEN UPON FURTHER TRUST, that he the said (*trustee*) his executors, administrators, or assigns, shall and lawfully may, by virtue of these presents alone, and without any direction, concurrence, or assent of the said (*grantor*) his heirs or assigns (55), make sale and absolutely dispose of all or any part of the hereditaments and premises hereby granted and released, or otherwise assured or intended so to be, for the then residue of the said term of years, either by public sale or by private contract, as he or they shall think fit, and convey and assure the same when sold unto the person or persons who shall have agreed to become the purchaser or purchasers thereof, and to his, her, or their executors, administrators, or assigns, or otherwise as he or they shall reasonably require. AND upon further trust, and it is hereby declared and agreed, that by and out of the money which shall arise or be obtained by any of the ways or means aforesaid, or other lawful ways or means, he the said (*trustee*) his executors, administrators, or assigns, do and shall in the first place retain and pay all costs, charges,

ANNUITIES.

Secured on
Freeholds.
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Trusts out of
the proceeds of
rents, &c. to
pay expenses,

(55) The concurrence of the owner of the estate in a sale, under trusts similar to these, was, till lately, considered requisite to complete the title, notwithstanding its being otherwise declared by the trust deed; but it is now well settled that such concurrence is not necessary. See *Corder v. Morgan*, 18 Ves. 344; *Clay v. Sharpe*, *ib.* 346. Power of sale.

ANNUITIES.

*Secured on
Freeholds.
(Full Form.)*

and to pay re-
sidue to grantor.

and expenses incurred in the execution of the trusts hereby reposed in him and them ; and also any monies which he or they shall have expended in repairing the said premises, or in insuring the same against loss by fire, or in or concerning any suit or suits at law or in equity for obtaining possession of the said premises, or in enforcing the performance of any contract or contracts entered into with any person or persons for the sale, purchase, or other disposition thereof, or of any part thereof. AND when and after full payment and satisfaction shall be made thereof, then upon trust, as to the surplus or residue of the money to arise by any of the means aforesaid, to pay and apply the same, or so much thereof as shall be requisite for that purpose, in satisfaction unto the said (*grantee*) his executors, administrators, or assigns, of all arrears then subsisting of the said annuity or yearly rent-charge of £ . AND in case the same shall be paid and satisfied by or out of the rents or growing proceeds of the said premises, that he the said (*trustee*) his executors, administrators, and assigns, do and shall permit and suffer the said (*grantor*) his heirs and assigns, to receive and retain, or otherwise do and shall pay or cause to be paid unto him or them, all and every the residue or surplus, if any, of the same rents and proceeds for his and their own proper use and benefit: BUT in case the same shall be paid or satisfied by any sale, mortgage, or other disposition of the said hereditaments and premises, or any part thereof, THEN after full pay-

But if money
raised by sale,
same to be in-
vested in the
funds or on real
security.

ment and satisfaction of all arrears of the said annuity, and all such costs, charges, and expenses as aforesaid, UPON TRUST (56), that he the said (*trustee*) his executors, administrators, and assigns, do and shall forthwith invest the residue or surplus of the money to arise by any of the means aforesaid, either in the purchase of three per cent. consolidated, or other Bank or government annuities, or security, in the name of him the said (*trustee*) his executors, administrators, or assigns, jointly with two other persons, the one to be named by the said (*grantor*) (57) and the other by the said (*grantee*) his executors, administrators, or assigns, upon proper trusts to be declared in writing under the hands and seals of the said trustees, to secure all future payments of the said annuity at the times and in the manner hereinbefore appointed for payment thereof, by or out

ANNUITIES.

Secured on
Freeholds.
(Full Form.)

(56) If the premises are subject to a mortgage, say,

Mortgage.

“UPON TRUST thereout to pay off and discharge the said sum of £ so secured upon the said premises by way of mortgage as aforesaid, and all interest which shall be then due and in arrear for the same, unless the same shall be sold or disposed of subject thereto.”

If they be subject to a former annuity, say,

Prior annuity.

“UPON TRUST thereout to repurchase the said annuity, yearly rent charge, or annual sum of £ so charged thereupon as aforesaid, in pursuance of the power in or by the said in part recited indenture of the day of contained for that purpose, unless sold or disposed of subject to the said annuity.”

(57) If the grant be during the life of the grantee, or the life of nominees, add,

Grantee, or nominees

“His executors, administrators, or assigns.”

ANNUITIES.

*Secured on
Freeholds.
(Full Form.)*

Or at request of
grantee in pur-
chase of another
annuity.

And pay surplus
to grantor.

of the dividends, interest, or other yearly proceeds thereof, if the same shall be sufficient for that purpose, but if not, then by sale or other disposition of a sufficient part of the principal sum so to be invested or raised, together with all reasonable costs, charges, and expenses thereby to be incurred or occasioned, or else and at the election and request of the said (*grantee*) his executors, administrators, or assigns, do and shall lay out the money so to arise, or any part thereof, in the purchase of one or more annuity or annuities of the clear yearly amount of £ in or from the Governor and Company of the Bank of England, or any other public company or office of assurance upon lives, or of or from the mayor and commonalty and citizens of the city of London, or the commissioners for the reduction of the national debt (58), to be respectively payable to the said (*grantee*) [his executors, administrators, and assigns (59),] during the natural life of the said (*grantor*) (60) in lieu or stead of the said annuity or yearly sum of £ hereby granted or secured as aforesaid. AND from and after such payments as aforesaid, IN TRUST to pay and apply the residue or surplus, if any, of the dividends, interest, and proceeds to arise from the

(58) By 48 and 49 Geo. III. the commissioners for reduction of the national debt are empowered to grant life annuities.

Grantee, or nominees.

(59) If during the life of grantee, or nominees, omit the words within brackets.

(60) If of nominees, say,

“ Or the survivors or survivor of the said (*nominees*).”

money which shall be so invested, and from so much of the said premises as for the time being shall not have been sold or disposed of for the purposes aforesaid, unto the said (*grantor*) and his assigns, during the term of his natural life, and from and after the decease of him the said (*grantor*) (61), and payment of all arrears of the said annuity or yearly sum of £ , and such proportionate part thereof, and all such costs, charges, and expenses as aforesaid, THEN AND LASTLY UPON TRUST to transfer and assign the residue of the said stock, funds, and securities, unto the executors, administrators, or assigns of the said (*grantor*) for his and their own use and benefit (62). AND

ANNUITIES.

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Freeholds.
(Full Form.)

Contracts of
trustee to bind
grantor.

(61) If the grant be during the lives of nominees, say,

Nominees.

“ From and after the decease of the survivor of them the said (*nominees*).”

(62) If the intent be that the land only, and not the person of the grantor, shall be liable to the payment of the annuity, see Co. Lit. s. 220. Co. Lit. 146, add,

Land only
chargeable.

“ PROVIDED always, and it is hereby expressly declared and agreed by and between the several parties hereto, that nothing in these presents contained shall extend, or be deemed or construed to extend, to charge or make liable the person of the said (*grantor*) either by writ or action of annuity, or otherwise howsoever to pay the said annuity, yearly rent charge, or annual sum of £ or any part thereof, but that all remedies for the recovery thereof shall be confined and limited to the lands, hereditaments, property, and premises hereby charged therewith, any covenant, grant, or other matter or thing hereinbefore contained to the contrary thereof in any wise notwithstanding.”

If a trustee of the grantor join in the grant or demise, and

Trustee.

ANNUITIES. it is hereby declared and agreed by and between the parties to these presents, and more especially the said (*grantor*) doth hereby for himself, his heirs, executors, and administrators, expressly declare, that all and every the leases, sales, mortgages, and other dispositions and contracts or agreements for such which shall be made, of or concerning the hereditaments and premises hereby demised, or intended so to be, or any part thereof, and all conveyances and assurances which shall

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Freeholds.
(Full Form.)*

his interest in the premises be such as to render it necessary that he should concur in such a manner as might without explanation render him personally liable at law to the payment of the annuity, there may be added here,

Indemnity to
trustee.

“ PROVIDED always, and it is hereby expressly declared and agreed by and between the said (*grantor*) and (*grantee*) that the joining or concurrence of the said (*trustee*) in the grant and demise heretofore made of the said annuity, or yearly rent charge, and premises respectively in the manner aforesaid, is meant and intended for the purpose only of effectually charging the same hereditaments and premises so vested in him as aforesaid, with the payment of the same annuity or yearly rent charge of £ and that the same shall not in any way, manner, or respect whatsoever affect the person or property of him the said (*trustee*) his heirs, executors, or administrators, or subject, or make liable him or them, or his or their estate, property, or effects to pay the said annuity, or yearly rent charge, or any part thereof, or any arrears thereof, or to any costs, charges, damages, or expenses whatsoever by reason of the non-payment thereof, or otherwise in relation thereunto, any thing hereinbefore contained or implied to the contrary in any wise notwithstanding.”

be executed by the said (*trustee*) his executors, administrators, or assigns, for carrying the same into effect, shall be good, valid, and efficient to all intents and purposes whatsoever, [and be binding upon the said (*grantor*) his heirs, executors, and administrators], in like manner as if the same respectively had been lawfully made and executed by him the said (*grantor*) before the execution of these presents; and to that end and intent the said (*grantor*) doth hereby nominate and appoint the said (*trustee*) his executors, administrators, and assigns, to be his lawful attorney and attornies to sign the name of him the said (*grantor*) [or of his heirs, executors, or administrators] unto and seal and deliver all or any such leases, mortgages, sales, dispositions, contracts and agreements, and conveyances or assurances, or do and cause to be done all and every or any other acts, matters, things, and assurances whatsoever, which shall be requisite, expedient, or adviseable for carrying the same into execution. AND to facilitate the purposes aforesaid it is hereby declared and agreed by and between all the parties hereto, according to their respective interests, that the receipt of the said (*trustee*) his executors, administrators, or assigns, shall at all times be a good and sufficient discharge to every tenant, purchaser, mortgagee, or other person or persons paying any money to the said (*trustee*) his executors, administrators, or assigns, in pursuance of these presents, and to the executors, administrators, and assigns of

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Freeholds.
(Full Form.)

Trustee's receipt to be a sufficient discharge.

ANNUITIES.

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Freeholds.
(Full Form.)*

every such person, for such sum or sums as shall therein be acknowledged or expressed to be received (63). AND shall protect and exonerate

Purchasers, &c.
not liable to see
to the appli-
cation of the
money.

Trustee.

(63) If the conveyance of the premises charged with the payment of the annuity be by the grantor and trustee, add here a covenant by such trustee that he has not incumbered, the form of which will be similar to that in Vol. II. p. 79.

It may in some cases be proper, where a trustee is a party, to add a proviso negating any construction to implicate any personal liability.

The joining of
trustee not to
charge his per-
son.

“ PROVIDED ALWAYS, and it is hereby agreed and declared by and between the said parties to these presents, that the joining of the said (*trustee*) in the grant and covenants hereinbefore contained is solely intended to charge the said messuages and hereditaments now vested in him in trust as aforesaid with the payment of the said annuity or yearly rent charge hereby granted; and that such grant and covenant, or any or either of them, shall not in anywise affect the person or property of the said (*trustee*) his heirs, executors, or administrators, or make him or them personally, or his or their own property, liable to pay the said annuity or yearly rent charge, or any part thereof, or any arrears thereof, or liable to pay the costs of any action, suit, or proceedings whatsoever, which may be instituted for the recovery thereof, or of any part thereof.”

Insurance
against fire.

If the premises chargeable with the payment of the annuity consist wholly or chiefly of houses or other buildings, it will be proper, unless they have been previously insured, and the policy assigned as hereinbefore mentioned, to insert here a covenant to insure them against fire, for the form of which see *post*, rider (E); and *ante*, p. 35, n. (52), also *ante*, Vol. V. p. 98.

Exemption
from distress.

An indulgence is sometimes allowed to the grantor by extending the time of distress, &c. with respect to a particular part

him, them, and every of them, from seeing to or **ANNUITIES.**
 being in any way responsible for or on account of
 the loss, misapplication, or non-application there-
 of, or of any part thereof, or for or on account of
 any want or defect of authority in such trustee,
 his executors, administrators, or assigns, to sell,
 mortgage, lease, or otherwise dispose of the said
 premises, or any part thereof, by reason of all

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Freeholds.
(Full Form.)*

of the premises charged with the annuity, the form of which may be thus:

“**PROVIDED** always, and it is hereby declared and agreed by and between the said (*grantor*) and (*grantee*) that notwithstanding any thing hereinbefore contained to the contrary thereof, that neither the said (*grantee*) and (*trustee*) or either of them, or the executors, administrators, or assigns, of either of them, will at any time or times hereafter make or take, or cause to be made or taken, any distress or distresses, entry or entries, or any other step, course, or proceeding whatsoever, in, upon, or concerning the messuage or dwelling house, (part or parcel of the hereditaments so hereby charged with the payment of the said annuity, yearly rent charge, or annual sum of £ as aforesaid), hereinbefore described to be situated at, &c. or in or upon the appurtenances to the same belonging, or any part thereof, for recovering or compelling payment of the same annuity, yearly rent charge, or annual sum of £ or any part or portion thereof, from, out of, or by means of the said messuage or dwelling house and premises under or by virtue of all or any of the powers, authorities, or remedies in these presents contained, or otherwise howsoever, unless and until the said annuity, yearly rent charge, or annual sum of £ or some part or portion thereof, shall have been in arrear and unpaid by the space of three calendar months at the least, next after the same or one of the days hereinbefore appointed for payment thereof.”

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Covenant by
grantor that he
is seised in fee.

arrears of the said annuity having been paid up before the completion of any such sale or disposition, or of any other matter or thing whatsoever relating thereto (64). AND the said (*grantor*) for

Wife.

(64) If the wife of the grantor be entitled to dower out of the lands chargeable with the payment of the annuity, and the grant be during the life of grantee, or the lives of nominees; or if the lands be the estate of the wife, (unless in the first case two-thirds of the premises are conceived to be an ample security), add here a covenant to levy a fine, as,

Covenant to
levy a fine *sur*
concessit.

“ And for rendering the said hereditaments and premises the more effectually chargeable with the payment of the said annuity, and in particular for exonerating the same from all right of dower, which the said (*wife*) may be entitled to, in the event of her surviving the said (*grantor*) her husband, and all other rights and titles whatsoever, He the said (*grantor*) for himself, his heirs, executors, and administrators, DOTH hereby covenant, declare, and agree with and to the said (*grantee*) his executors, administrators, and assigns, and she the said (*wife*) doth hereby consent and agree, that they the said (*grantor*) and his wife, shall and will at the proper expense and costs of the said (*grantor*) his executors and administrators, as of term now last past, [and in default thereof, then in, or as of any subsequent term, when thereunto required by the said (*grantee*)] well and duly acknowledge and levy, or cause to be so acknowledged and levied, unto the said (*grantee*) and his heirs, before the justices of his Majesty's court of Common Pleas at Westminster [or other justice or justices, person or persons competent and duly authorized in that behalf], one or more fine or fines *sur concesserunt*, &c. with proclamations to be thereupon had [according to the form of the statute in such case provided, or such other fine or fines, and in such other manner and form as the circumstances of the case may require], whereby the said (*grantor*) and his wife, shall and will grant and convey all and singular the

himself, his heirs, executors, and administrators, **ANNUITIES.**
doth hereby covenant, declare, and agree with and

*Secured on
Freeholds.
(Full Form.)*

messuages, lands, tenements, and hereditaments so hereinbefore charged with the payment of the said annuity, yearly rent charge, or annual sum of £ as aforesaid, with their and every of their appurtenances [by such apt and proper names, qualities, and other descriptions as shall be sufficient and proper, effectually to comprise and pass the same respectively], unto the said (*grantee*) and his heirs, for and during the natural life of the said (*grantor*). AND it is hereby declared and agreed by and between all and every the said parties to these presents, that [as well] the said fine or fines [so as aforesaid, or in any other manner to be levied, as also all and every other fine or fines, common recovery and recoveries, conveyances, and assurances in the law whatsoever, had or to be had, made, levied, acknowledged, suffered, or executed of the same manors, messuages, lands, tenements, and hereditaments, or any of them, or any part thereof, by and between the said parties to these presents, or any of them, or whereunto they or any of them are, is, or shall be party or parties, privy or privies], shall from and after the perfecting thereof, be and enure, and be adjudged, deemed, construed, and taken to be and enure for corroborating, confirming, and establishing the said annuity, or yearly rent charge of £ hereinbefore charged upon, and payable out of the said hereditaments unto the said (*grantee*) his executors, administrators, and assigns, during the life of the said (*grantor*) (*or as the case may be*) as aforesaid, and the several powers and remedies hereby given for recovering or obtaining payment of the same, according to the true intent and meaning thereof, and of these presents, and subject thereto, to the use of the said (*trustee*) his executors, administrators, and assigns, for the term of 500 years, in the manner and upon and for the trusts, intents, and purposes hereinbefore declared or expressed concerning the same."

Declaration of
the uses of the
fine.

*

ANNUITIES. to the said (*grantee*) and also with and to the said (*trustee*) and their respective executors, administrators, and assigns, in the manner following (that is to say) (65) that he the said (*grantor*) (66) at the time of the sealing and delivery of these presents is lawfully, rightfully, and absolutely seised in his demesne as of fee, in his own right, and to his own use, of all and singular the hereditaments (67) and premises hereinbefore described and demised, or otherwise assured, or intended so to be, with their and every of their appurtenances, as of, in, and for a good, perfect, clear, absolute,

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Freeholds.
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Fine already
acknowledged.

If the fine be acknowledged before the execution of the deed (which it should be where it is the wife's estate, see *ante*, Vol. II. No. XXXI. p. 12, notes), or the annuity is granted during the life of the grantee or of nominees, say,

“ The said (*grantor*) and his wife, have on or before the day of the date of these presents, duly acknowledged a fine *sur concesserunt* unto the said (*grantee*) and his heirs; and the same is intended to be levied and perfected with all reasonable despatch. Now it is hereby declared and agreed,” &c. as above, margin *.

Trustee.

(65) If the grantor took the estate to himself and a trustee, vary this covenant, as in Vol. II. Nos. XXXIII. and XXXIV.; Vol. V. No. XIX.

Wife.

If the wife of the grantor be a party, make this and the following covenants accord with that circumstance, as in Vol. II. No. XXXI. p. 20.

“ For and notwithstanding.”

(66) In this as in other conveyances for securing the payment of money, the qualifying words of “ for and notwithstanding,” are usually omitted; and see Vol. V. p. 49, n. (1).

Moiety, &c.

(67) If the conveyance be of a moiety or other portion only of the estate, see Vol. V. No. XI. p. 267.

and indefeasible estate of inheritance (68) in fee- ANNUITIES.
 simple in possession (69) without there being any
 manner of trust, condition, power of revocation,
 or of limiting or declaring any new or other use
 or uses, or any other qualification, restriction,
 matter, or thing whatsoever, which can or may
 impeach, make void, lessen, incumber, determine,
 or prejudicially affect the same estate or premises,
 or any part thereof, in any manner howsoever,
 (save only and except leases and agreements for
 leases, of which counterparts have been produced
 unto the said (*grantee*) his counsel or solicitor, at
 or before the sealing and delivery of these pre-
 sents) (70). [AND moreover, that the said here-

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Freeholds.
(Full Form.)

Premises are of
the annual value
of £ .

(68) If the grantor have an estate for life only in the pre- Life estate.
 mises charged with the payment of the annuity, say,

“Of an estate of freehold, for and during the term of his
 natural life, under or by virtue of the hereinbefore in part
 recited indenture [*or will,*] &c.” *as above.*

(69) If part of the land be copyhold, add,

Copyholds.

“And of and in the copyhold or customary parts thereof,
 of and for a good and customary estate of inheritance in fee-
 simple, according to the custom of the said manor of .”

(70) If the grantor's wife be entitled to dower say,

Dower.

“And such right or title to dower as she the said (*wife*)
 has in or out of the said premises, as the wife of the said
 (*grantor*) and which is intended to be barred and ex-
 tinguished by the fine hereinbefore agreed to be levied as
 aforesaid.”

If the estate be in mortgage, add,

Mortgage.

“And save only and except the said in part recited mort-
 gage [and the powers and trusts therein contained].”

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Freeholds.
(Full Form.)*

That he hath
right to grant
the annuity.

ditaments and premises are now of the full and clear annual value of £ free of all reprisals and outgoings whatsoever (†). [AND also, that he the said (*grantor*) now hath also in himself full power, and lawful and absolute right and authority to grant the said annuity, yearly rent charge, or annual sum of £ , for and during the natural life of the said (*grantor*) [*or grantee*] (71) in the manner hereinbefore expressed, and to charge the said hereditaments and premises with

Annuity.

If it be subject to an annuity, say,

“ And save only and except the said annuity or annual sum of £ so chargeable upon the said premises as aforesaid, and the term of years and trusts and powers created and subsisting for securing the same.”

The lands
charged are of
sufficient annual
value.

(†) In the grant of an annuity, it is sometimes proper to insert a covenant by the grantor that the premises charged with the payment is of sufficient clear annual value to cover it, “ because, as it is made to issue annually out of the lands, the security will not otherwise be such as to secure the ends of the grantee, whose object is a clear and certain annual payment; for he has parted with a principal sum, not as in the case of a mortgage, to have it repaid out of the gross value of the estate, but for the sake of an annual payment by way of income, in lieu of his principal, which he can never have again. And the power of sale usually given in annuity deeds, in case of default, will not adequately help him, for if the premises do not, free of all preceding charges and reprises, make a return equal to the amount of his annuity, the produce to arise from a sale cannot be expected to be invested upon any security to answer it.”

Nominees.

(71) If the grant be during the lives of nominees, say,

“ For and during the natural lives of the said (*nominees*) and the life of the survivor or longest liver of them.”

the payment thereof in the manner aforesaid, and according to the true intent and meaning of these presents. AND also to demise and assure (72) the same hereditaments and premises unto the said (*trustee*) his executors, administrators, and assigns, for the said term of five hundred years (73),

ANNUITIES.

Secured on
Freeholds.
(Full Form.)

(72) If part of the premises be copyhold, say,

Copyholds.

“ALL and singular the said freehold hereditaments and premises hereby demised unto the said (*trustee*) his executors, administrators, and assigns, and to surrender and assure all and singular the said copyhold or customary hereditaments and premises hereinbefore agreed or covenanted to be surrendered, with their respective appurtenances to the use of the said (*grantee*) his heirs and assigns.”

(73) If the grantor be tenant for life only of the premises charged with the annuity, add, Tenant for life.

“If he the said (*grantor*) shall so long live.”

And if he be so under a will or marriage settlement, with power for the trustees of such settlement to sell the trust estates, and invest the money in the funds, or in the purchase of other lands with his consent, add,

“AND further, that notwithstanding the powers and authorities, or power or authority to the said (*grantor*) and the said (*trustees of the settlement*) given or reserved in or by the said in part recited indenture of settlement, they the said (*trustees*) or any or either of them, shall not nor will at any time hereafter during the subsistence or continuance of the said annuity, yearly rent charge, or annual sum of £ expressed or intended to be hereby granted, by or with the consent, approbation, or authority of him the said (*grantor*) sell, convey in exchange, or otherwise dispose of the said messuages, lands, tenements, and hereditaments hereinbefore charged with the payment of the said annuity, yearly rent charge, or annual sum of £. or any of them, or any part thereof, or the estate for life, or other in-

Lands charged
with the annuity
not to be sold or
exchanged.

ANNUITIES.

*Secured on
Freeholds.
(Full Form.)*

That the grantee
may quietly re-
ceive the an-
nuity, &c.

Free from in-
cumbances.

Covenant for
further as-
surance.

upon the trusts, and to and for the ends, intents, and purposes hereinbefore declared or expressed concerning the same.] AND that the same annuity, yearly rent charge, or annual sum, shall be received and taken, and the said hereditaments and premises be had, holden, and enjoyed, as a security for the same, without any hindrance, interruption, claim, or demand whatsoever from or by him the said (*grantor*) or any person or persons whomsoever, according to the true intent and meaning of these presents. AND that free and clear, and freely, clearly, and absolutely acquitted, exonerated, and discharged, or otherwise by and at the expense of the said (*grantor*) his executors or administrators, well and sufficiently saved, defended, protected, kept harmless, and indemnified of, from, and against all [former and other gifts, grants, demises, conveyances, judgments, recognizances, statutes, extents, executions, debts, legacies, portions, annuities, rent charges, forfeitures, and all] and singular [other] estates, rights, titles, interests, charges, and incumbrances whatsoever, [save only and except such leases or agreements as aforesaid.] AND further, that he the said (*grantor*) (74), and all and every person and

terest of him the said (*grantor*) therein, without the consent in writing of the said (*grantee*) his executors, administrators, and assigns, first had and obtained for that purpose."

Nominees.

(74) If the annuity be granted during the life of the grantee, or the lives of nominees, add,

"His heirs, executors, and administrators."

persons whomsoever, having or lawfully claiming any estate, right, title, trust, or interest, either at law or in equity, of, in, to, or out of the (75) hereditaments and premises hereby granted and demised (76), or otherwise assured, or intended so to be, or any part thereof, from, through, under, or in trust for him, them, or any or either of them, or any of the ancestors of the said (*grantor*) (other than persons entitled as aforesaid, so far as concerns their said respective estates and interests,) shall and will from time to time, and at all times hereafter, during the natural life of the said (*grantor*) or (*grantee*) (77), upon every reasonable request of the said (*grantee*) his executors, administrators, or assigns, make, do, acknowledge, levy, suffer, and execute, [or cause or procure to be made, done, acknowledged, levied, suffered, and executed,] at the proper costs and expense in all things of him the said (*grantor*) (78) his executors or administrators, all such further and other lawful and reasonable acts, deeds, matters,

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(Full Form.)

(75) If the conveyance be of a moiety or other portion only of the estate, see Vol. V. No. XI. p. 270. Moiety, &c.

(76) If part of the premises be copyhold, add,

Copyholds.

“ Or covenanted or agreed to be surrendered.”

(77) If the annuity be granted during the lives of nominees, add, Nominees.

“ During the joint natural lives of the said (*nominees*) and the life of the survivor or longest liver of them.”

(78) Unless it be otherwise stipulated, the expense of any further assurance must be borne by the grantee, see 1 Bulst. 90. Expense of further assurance.

ANNUITIES. and things whatsoever, as well for the further, better, more perfectly, and absolutely, or satisfactorily granting, assuring, and confirming the said annuity, yearly rent charge, or annual sum of £ unto the said (*grantee*) his executors, administrators, and assigns, during the natural life of, &c. (*as above*) according to the true intent and meaning of these presents, and charging the same upon the hereditaments and premises hereinbefore described, or any part thereof, as also for demising and assuring the same hereditaments and premises unto the said (*trustee*) his executors, administrators, and assigns, for the then residue of the said term or period of years (79), upon and for the trusts, intents, and purposes, hereinbefore expressed, or intended, concerning the same. AND moreover shall and will at the request, and costs and charges of the said (*grantor*) his executors, administrators, or assigns, in case of any default being made in payment of the said annuity, yearly rent charge, or annual sum, or any part thereof, join and concur with the said (*trustee*) his executors, administrators, or assigns, in or for conveying or otherwise assuring the same hereditaments and premises, or any part thereof, unto or for the use of any purchaser (80)

Secured on
Freeholds.
(Full Form.)

Grantor will
concur in sales,
&c.

Tenant for life.

(79) If the grantor be tenant for life only, add,

“ If the said (*grantor*) shall so long live.”

(80) The concurrence of the grantor is, however, not necessary; see Vol. V. p. 92, and *ante*, p. 39, n. (55).

or purchasers, mortgagee or mortgagees, lessee or lessees, or other person or persons whomsoever, his or their executors, administrators, or assigns, for all the residue or remainder which shall be then to come or unexpired of the said term of five hundred years (81), in such manner and form as the said (*grantee*) his executors, administrators, or assigns, or his or their counsel in the law, being of the degree of a barrister, shall reasonably require or advise (82). And moreover that until

ANNUITIES.

Secured on
Freeholds.
(Full Form.)

(81) If part of the premises be copyhold, add,

Copyholds.

“And for the better and more effectually surrendering and assuring all and singular the said copyhold or customary lands and hereditaments hereinbefore covenanted or agreed to be surrendered, or mentioned or intended so to be, unto the said (*grantee*) his heirs and assigns.”

If the premises are to be insured, add a covenant here for that purpose, as *post*, rider (E).

If the estate be subject to any prior incumbrance, add here a covenant by the grantor to pay and indemnify against them; and see *post*, rider (H). Prior mortgage or incumbrance.

(82) It is usual to add,

“So nevertheless that the joining or concurrence of the said (*grantor*) his heirs, executors, administrators, or assigns shall not be deemed necessary to perfect any sale or other disposition, or conveyance, or assurance of the said hereditaments and premises, or any part thereof, but shall be deemed and continue to be only for the satisfaction of any mortgagee, purchaser, or lessee thereof, and not further or otherwise.” Grantor's concurrence in sale.

But a clause of this kind is not necessary; see Vol. V. p. 92, and *ante*, p. 39, n. (55).

If the grantor be tenant for life only of the premises charged Life.

ANNUITIES.

*Secured on
Freeholds.
(Full Form.)*

Indemnity to
trustee.

any such further or other assurance shall be made and perfected, he, they, and every of them shall and lawfully may peaceably and quietly have, hold, and enjoy all and singular the said hereditaments and premises, or any part thereof, and receive and take the rents, issues, and profits thereof, according to the true intent and meaning of these presents. PROVIDED ALWAYS, and it is hereby declared and agreed that the said (*trustee*) his executors, administrators, or assigns, shall not be answerable for any loss, which may happen to or in respect of the said hereditaments, funds, monies, securities, or trust premises,

with the payment of the annuity, with power of consenting to the sale of the settled estates, add,

Covenant by
grantor in case
of sale to sub-
stitute other
premises in
their room.

“ And in the case of any sale, exchange, or other disposition of the said lands and hereditaments, shall and will, within the space of calendar months next thereafter, convey and assure other lands and hereditaments to be approved of by the said (*grantee*) his executors, administrators, or assigns, and of equal value with those which shall have been sold, exchanged, or disposed of, unto the said (*trustee*) his executors, administrators, or assigns, or unto such other person or persons as he the said (*grantee*) his executors, administrators, or assigns, shall name or appoint in that behalf, for such period or number of years as shall be then to come and unexpired, by efflux of time of the said term of 500 years hereby demised, upon such and the same or the like trusts for securing the payment of the said annuity, yearly rent charge, or annual sum of £ hereby granted, as the lands and hereditaments hereby demised, or otherwise assured as aforesaid, or mentioned or intended so to be.”

for the time being, or any part thereof, or the rents, issues, profits, dividends; or interest thereof, or of any part thereof, unless the same shall happen by or through his or their own gross and wilful neglect or default, and that he and they shall be allowed to retain and be paid out of or from the said trust, hereditaments, monies, and premises, all such sums as he or they shall respectively expend or be put unto in the taking the opinion or advice of counsel or of any court of law or equity, for his or their guidance, protection, or reasonable satisfaction, relative to his or their execution of the trusts hereby reposed in him and them, or other matter, cause, or thing whatever concerning the same. [AND further that he the said (*grantee*) his executors, administrators, or assigns, shall not in any case be chargeable with or accountable for any loss or misapplication of the said trust, monies, or premises, or be required to abate the said annuity or yearly sum of £ , or any part thereof, by reason or account of any such loss or misapplication, but every such loss or misapplication shall, so far as the same may tend to prejudice him or them or the said annuity, be paid and made good by the said (*grantor*) his heirs, executors, or administrators, any rule of law or equity to the contrary in any wise notwithstanding.] { AND the said (*grantor*) doth hereby further covenant, declare, and agree in the manner and form aforesaid, that he the said (*grantor*) shall and will at any time or times hereafter, at the request of the

ANNUITIES.

Secured on
Freeholds.
(Full Form.)

Covenant by
grantor to ap-
pear at insurance
office.

ANNUITIES.

*Secured on
Freeholds.
(Full Form.)*

Grantor will not
prejudice the
policy of assur-
ance.

said (*grantee*) his executors, administrators, or assigns, appear (83) in person at any office or place of assurance within the cities of London or Westminster, or send, or cause to be sent to any such office, notice in writing of his place of abode, together with a certificate or other satisfactory document of the state of his health, and do and procure to be done all or any such other act or thing as shall be requisite for enabling the said (*grantee*) his executors, administrators, or assigns, to insure and keep insured any sum or sums of money upon the life of him the said (*grantor*). AND that in case of any such assurance being effected, he the said (*grantor*) shall not, nor will leave the United Kingdom of Great Britain and Ireland, without giving one calendar month's notice thereof, unto the said (*grantee*) his executors, administrators, or assigns, nor do or cause to be done any act or thing whatsoever,

Grantee, or
nominees.

(83) Where the annuity is granted for the life of the grantee, or the lives of nominees, this covenant should be omitted as unnecessary.

Insurance by
grantor.

It is sometimes required of the grantor to insure his own life to the amount of the purchase money for the annuity, which has been holden not to vitiate the transaction on the score of usury, as guaranteeing the repayment of the money advanced; but as it seems to approach very nearly to the principle upon which the laws of usury are founded, and at the same time frequently augments the annual payment to be made by the grantor so considerably as to endanger the contract on the ground of its being a hard and oppressive bargain, this practice is not to be recommended.

whereby the same or the benefit thereof shall or may be annulled or defeated, or be rendered or become void, voidable, or otherwise prejudiced. AND further that in case the said (*grantor*) shall at any time during the existence of the said annuity or yearly sum of £ , leave the United Kingdom of Great Britain and Ireland, or enter into the service of the army or navy, or other mode of life which shall occasion to the said (*grantee*) his executors, administrators, or assigns, any extra premium or expense, for effecting or continuing any such assurance as aforesaid, he the said (*grantor*) his executors or administrators shall and will from time to time, as often as the same shall happen, well and truly pay or cause to be paid unto him and them the amount of all such extra premium or insurance money, within the space of seven days next thereafter, in addition to the said annuity or yearly sum of £ and in default thereof the same shall be chargeable upon and payable out or by means of the aforesaid hereditaments and premises in like manner as the said annuity or yearly sum, and payable on the then next quarterly day of payment thereof. AND WHEREAS it hath been agreed that judgment shall be immediately confessed and entered up against the said (*grantor*) in pursuance of the hereinbefore in part recited warrant of attorney, but that no execution shall be issued out thereupon until such default shall be made in payment of the said annuity as hereinafter is men-

ANNUITIES.

Secured on
Freeholds.
(Full Form.)

Will pay extra
insurance on
leaving the
kingdom.

ANNUITIES.

*Secured on
Freeholds.
(Full Form.)*

Judgment upon
the bond to be
a collateral se-
curity only.

tioned. Now THIS INDENTURE FURTHER WITNESS-
ETH, that any judgment which shall or may be en-
tered up (84) by the said (*grantee*) his executors,
administrators, or assigns against the said (*grantor*)
by virtue of the said in part recited warrant of at-
torney, or otherwise shall be deemed a collateral
or further security only for the payment of the
said annuity or yearly sum of £ , and that no
execution shall be issued out upon or by virtue of
the said judgment, until some quarterly payment,
or other portion thereof shall be in arrear for the
space of twenty-one days next after the same is
hereinbefore made payable. PROVIDED never-
theless, that when and so often as the said an-
nuity or yearly sum shall be so in arrear, he the
said (*grantee*) his executors, administrators, and
assigns shall or lawfully may sue out such exe-
cution for all or any part of the arrears of the
same annuity, [or for the whole of the said sum
of £] and all costs, charges, and expenses
which shall have been incurred or occasioned
thereby, or by any such extra premium or as-

Warrant of
attorney.

(84) It is proper that the judgment should be immediately entered up lest the grantor should die, which would vacate the warrant; hence it is more particularly necessary where the annuity is granted for the life of the grantee, vid. 1 Ventr. 310.

Judgment not
to be entered
up till default.

But the immediate confession of judgment is sometimes objected to as unnecessarily sullyng the grantor's title, and may be dispensed with where the deed is accompanied by a bond, and the payment of the annuity is deemed otherwise most satisfactorily secured, in which case instead of this clause add as *post*, rider (L).

insurance money as aforesaid. AND that it shall not be necessary for that purpose that the said judgment (85) should be revived by reason of the same having been entered on record for the space of one year or upwards (86), or of arrears accrued subsequent to the said judgment, or of the said (*grantor*) being dead (87), and this agreement shall and may at all times be pleaded and operate in bar to any advantage being had on account thereof, any rule of law or equity to the contrary notwithstanding. AND as to and con-

ANNUITIES.

Secured on
Freeholds.
(Full Form.)

(85) Where judgment has not been entered upon the warrant of attorney within a year and a day from the date, it cannot afterwards be done without leave of the court. *Lushington v. Waller*, 1 Hen. Blac. 95; on an affidavit by the party of the debt not being satisfied, *Lit. Ab.* 118; 2 Shaw. 253.

Entry of judgment.

(86) The writ of execution must be sued out within a year and a day after judgment has been entered up, or it will, *prima facie*, be considered as satisfied; the court will, however, grant a writ of scire facias in pursuance of statute Westm. 2, 13 Ed. I. c. 45, to show cause why judgment should not be revived and the execution issue; or the grantee may bring an action of debt on the dormant judgment. *Co. Lit.* 290. 3 Blac. Com. 421. *Wild v. Sands*, 2 Stra. 718. *Cowl v. Attaway*, 8 Term Rep. 257.

Execution must be sued out within a year.

Nor can execution be sued out for arrears of an annuity accruing after judgment entered up, without a scire facias as required by 8 and 9 Wm. III. c. 11. s. 8. *Collins v. Collins*, 2 Burr. 820. *Walcot v. Goulding*, 8 Durnf. and E. 126. *Wilmington v. Swinton*, 6 East, 550. Hence the propriety of the above clauses.

(87) If the judgment have been entered up longer than a year, execution cannot be issued out upon it without a certificate of the party being alive, as no writ of execution will lie against even the goods of a debtor after his decease, unless it be tested in his life-time; see *Bragner v. Langmead*, 7 Durnf. and E. 20, and cases there cited.

Certificate of grantor's life.

ANNUITIES.

*Secured on
Freeholds.
(Full Form.)*

That the grantee
may quietly re-
ceive the an-
nuity, &c.

Free from in-
cumbrances.

Covenant for
further as-
surance.

upon the trusts, and to and for the ends, intents, and purposes hereinbefore declared or expressed concerning the same.] AND that the same annuity, yearly rent charge, or annual sum, shall be received and taken, and the said hereditaments and premises be had, holden, and enjoyed, as a security for the same, without any hindrance, interruption, claim, or demand whatsoever from or by him the said (*grantor*) or any person or persons whomsoever, according to the true intent and meaning of these presents. AND that free and clear, and freely, clearly, and absolutely acquitted, exonerated, and discharged, or otherwise by and at the expense of the said (*grantor*) his executors or administrators, well and sufficiently saved, defended, protected, kept harmless, and indemnified of, from, and against all [former and other gifts, grants, demises, conveyances, judgments, recognizances, statutes, extents, executions, debts, legacies, portions, annuities, rent charges, forfeitures, and all] and singular [other] estates, rights, titles, interests, charges, and incumbrances whatsoever, [save only and except such leases or agreements as aforesaid.] AND further, that he the said (*grantor*) (74); and all and every person and

terest of him the said (*grantor*) therein, without the consent in writing of the said (*grantee*) his executors, administrators, and assigns, first had and obtained for that purpose."

Nominees.

(74) If the annuity be granted during the life of the grantee, or the lives of nominees, add,

" His heirs, executors, and administrators."

otherwise direct; and all other securities hereby given or otherwise provided and then subsisting for the payment of the same annuity, shall cease, determine, and be wholly void (89), and these presents and the aforesaid bond, and warrant of attorney, unless filed, and other the said securities shall be delivered up to be cancelled, and satisfaction be entered on the record of the aforesaid judgment, and all and every the funds and securities, or monies in hand, which shall have been invested or raised under or by virtue of these presents, shall be paid or assigned (*as the case may require*) unto the executors (90), administrators, or assigns of him the said (*grantor*) in such manner as they shall reasonably require. AND WHEREAS upon the treaty for the said annuity it was agreed that the said (*grantor*) should be at liberty to repurchase (91) the same, upon the terms and con-

ANNUITIES.

*Secured on
Freeholds.
(Full Form.)*

Power of re-
purchase.

(89) An estate for years may be declared to become void upon any specific event, *Freeman v. Boyle*, 2 Ridgw. P. C. 79, in which it differs from an estate of freehold, which will not be void, but voidable only by entry, see *Walter v. Davids*, Cowp. 803.

Cessation of
term.

But if the grantor be tenant for life only, this declaration of the cessation of the term on the death of the grantor need not be inserted, as it will necessarily determine on his decease.

Tenant for life.

(90) If the annuity be granted for the life or lives of a grantee or of nominees, say,

Life of grantee
or nominees.

“Unto the said (*grantor*) his executors, &c. as he or they shall,” &c. *as above*.

(91) It was formerly conceived that a proviso for the repurchase of an annuity vitiated the contract, by converting the sum advanced into a loan at usurious interest. See *Lawley v. Hooper*, 3 Atk. 278; but as this proviso is solely for the advantage of

Power of re-
purchase.

ANNUITIES. and things whatsoever, as well for the further, better, more perfectly, and absolutely, or satisfactorily granting, assuring, and confirming the said annuity, yearly rent charge, or annual sum of £ unto the said (*grantee*) his executors, administrators, and assigns, during the natural life of, &c. (*as above*) according to the true intent and meaning of these presents, and charging the same upon the hereditaments and premises hereinbefore described, or any part thereof, as also for demising and assuring the same hereditaments and premises unto the said (*trustee*) his executors, administrators, and assigns, for the then residue of the said term or period of years (79), upon and for the trusts, intents, and purposes, hereinbefore expressed, or intended, concerning the same. AND moreover shall and will at the request, and costs and charges of the said (*grantor*) his executors, administrators, or assigns, in case of any default being made in payment of the said annuity, yearly rent charge, or annual sum, or any part thereof, join and concur with the said (*trustee*) his executors, administrators, or assigns, in or for conveying or otherwise assuring the same hereditaments and premises, or any part thereof, unto or for the use of any purchaser (80)

Secured on
Freeholds.
(Full Form.)

Grantor will
concur in sales,
&c.

Tenant for life.

(79) If the grantor be tenant for life only, add,

“ If the said (*grantor*) shall so long live.”

(80) The concurrence of the grantor is, however, not necessary; see Vol. V. p. 92, and *ante*, p. 39, n. (55).

or purchasers, mortgagee or mortgagees, lessee or lessees, or other person or persons whomsoever, his or their executors, administrators, or assigns, for all the residue or remainder which shall be then to come or unexpired of the said term of five hundred years (81), in such manner and form as the said (*grantee*) his executors, administrators, or assigns, or his or their counsel in the law, being of the degree of a barrister, shall reasonably require or advise (82). And moreover that until

ANNUITIES.

Secured on
Freeholds.
(Full Form.)

(81) If part of the premises be copyhold, add,

Copyholds.

“And for the better and more effectually surrendering and assuring all and singular the said copyhold or customary lands and hereditaments hereinbefore covenanted or agreed to be surrendered, or mentioned or intended so to be, unto the said (*grantee*) his heirs and assigns.”

If the premises are to be insured, add a covenant here for that purpose, as *post*, rider (E).

If the estate be subject to any prior incumbrance, add here a covenant by the grantor to pay and indemnify against them; and see *post*, rider (H).

Prior mortgage
or incumbrance.

(82) It is usual to add,

“So nevertheless that the joining or concurrence of the said (*grantor*) his heirs, executors, administrators, or assigns shall not be deemed necessary to perfect any sale or other disposition, or conveyance, or assurance of the said hereditaments and premises, or any part thereof, but shall be deemed and continue to be only for the satisfaction of any mortgagee, purchaser, or lessee thereof, and not further or otherwise.”

Grantor's con-
currence in
sale.

But a clause of this kind is not necessary; see Vol. V. p. 92, and *ante*, p. 39, n. (55).

If the grantor be tenant for life only of the premises charged Life.

ANNUITIES.

*Secured on
Freeholds.
(Full Form.)*

Indemnity to
trustee.

any such further or other assurance shall be made and perfected, he, they, and every of them shall and lawfully may peaceably and quietly have, hold, and enjoy all and singular the said hereditaments and premises, or any part thereof, and receive and take the rents, issues, and profits thereof, according to the true intent and meaning of these presents. PROVIDED ALWAYS, and it is hereby declared and agreed that the said (*trustee*) his executors, administrators, or assigns, shall not be answerable for any loss, which may happen to or in respect of the said hereditaments, funds, monies, securities, or trust premises,

with the payment of the annuity, with power of consenting to the sale of the settled estates, add,

Covenant by
grantor in case
of sale to sub-
stitute other
premises in
their room.

“ And in the case of any sale, exchange, or other disposition of the said lands and hereditaments, shall and will, within the space of calendar months next thereafter, convey and assure other lands and hereditaments to be approved of by the said (*grantee*) his executors, administrators, or assigns, and of equal value with those which shall have been sold, exchanged, or disposed of, unto the said (*trustee*) his executors, administrators, or assigns, or unto such other person or persons as he the said (*grantee*) his executors, administrators, or assigns, shall name or appoint in that behalf, for such period or number of years as shall be then to come and unexpired, by efflux of time of the said term of 500 years hereby demised, upon such and the same or the like trusts for securing the payment of the said annuity, yearly rent charge, or annual sum of £ hereby granted, as the lands and hereditaments hereby demised, or otherwise assured as aforesaid, or mentioned or intended so to be.”

him the said (*grantee*) his executors, administrators, or assigns, the sum of £ of lawful money of that part of the United Kingdom of Great Britain and Ireland called England, as or for the repurchase of the said annuity or yearly sum, together with all arrears and other sums of money which shall be then due or growing due for or in respect of the same, under or by virtue of these presents, up to and including the day of the expiration of the said notice, or of such payment in lieu thereof as aforesaid (97), then and in such case he the said (*grantee*) his executors, administrators, and assigns, shall and will receive and accept of the said sum of £ in full of and for the repurchase of the same annuity or yearly sum of £ , and shall and will, at the request, and costs and charges of the said (*grantor*) his executors or administrators, assign, release, surrender, or otherwise dispose of, the said annuity or yearly sum, and all the then subsisting securities for the same, and also all and singular the hereditaments and premises hereby made chargeable with the payment thereof, for the residue then unexpired of the said term of five hundred years, or so much and such part

ANNUITIES.

*Secured on
Freeholds.
(Full Form.)*

(97) The sum stipulated to be paid for the repurchase of an annuity is usually that which was originally paid by the grantee, but it is sometimes more; in a moral and equitable point of view, however, it ought to be a less sum, i. e. a sum proportioned to the deterioration of the life for which it was granted.

Consideration
for repurchase.

ANNUITIES. of the said hereditaments, term, and premises, as shall not have been disposed of under or by virtue of the trusts of these presents, and transfer all such principal money as shall have been invested in government or upon other securities for the purposes aforesaid, or so much and such parts thereof as shall not have been applied and disposed of for the same purposes (98), {unto the said (*grantor*) his executors, administrators, or assigns, or such other person or persons as he or they shall in that behalf direct or appoint (99)}, and deliver up or otherwise dispose of the aforesaid bond, and the said warrant of attorney unless then filed, and enter up satisfaction upon the record of the said judgment, if any, or otherwise dispose of or act in or concerning the same respectively, as he the said (*grantor*) his heirs, executors, or administrators shall lawfully require in that behalf; and also at the like request, costs, and charges, assign or cause to be assigned unto the said (*grantor*) his executors, administrators, or assigns, the benefit of any policy of assurance which may have been effected by the said (*grantee*) his executors, administrators, or assigns, and which

Surety.

(98) If a surety join, omit the words within braces and see *post*, rider (K).

Securities void.

(99) It is better that the deed should provide for the annuity and securities on repurchase being so assigned, &c. as the grantor shall direct, than declare that they shall be void (which is the usual way) as the former mode will enable him to transfer them to a future grantee, &c. who may advance a larger sum, without any intermediate incumbrances attaching upon them.

shall be then subsisting and in force (100) or **ANNUITISE.**
 capable of being kept on foot or renewed, in such
 manner and form as he the said (*grantor*) his exe-
 cutors, administrators, or assigns, or his or their
 counsel in the law shall reasonably require (101).
 IN WITNESS, &c.

Secured on
 Freeholds.
 (Full Form.)

(100) As the policy is kept up at the expense of the grantor **Policy.**
 (the amount of insurance being computed and added to and in
 augmentation of the annuity) and as it cannot be continued by
 the grantee after he ceases to have an interest in the life of the
 assured, it is reasonable that it should on the repurchase of the
 annuity be assigned to the grantor.

(101) If a receiver be appointed for the purpose of keeping **Receiver.**
 down the annuity, insert such appointment here, as in the form
 given, *post*, rider (F).

If there be a surety, here may be inserted a further witness, **Surety.**
 that if he repurchase the annuity or advance money to grantor
 for that purpose, the premises shall be chargeable with the re-
 payment with interest, and that the trustee shall thenceforth
 stand possessed of the term in trust for securing the same, with
 power to use the like powers as for keeping down the annuity.
 See *post*, rider (K).

If there be more than one grantee, it may be declared that **Several**
 there shall be no benefit of survivorship between them, (but see **grantees.**
ante, Vol. V. p. 363, n. (1)), as,

“ **PROVIDED ALWAYS**, and it is hereby mutually declared
 and agreed by and between the said (*grantees*) that no be-
 nefit of survivorship shall be had or taken by either of them,
 or their respective executors, administrators, or assigns, in
 respect of the said annuity or yearly sum of £ herein-
 before granted or secured, but that in case of the decease of
 either of them during the natural life of the said the
 survivor of them the said (*grantee*) his executors, admi-
 nistrators, and assigns, and the said (*trustee*) his executors,
 administrators, and assigns, shall respectively stand possessed
 of and interested in the said annuity or yearly rent charge,
 and the several securities given or provided for the same, as

ANNUITIES.

*Secured on
Freeholds.
(Full Form.)*

Receipt to be indorsed.

I do hereby acknowledge to have received of and from the within named (*grantee*) the full and just sum of £ (102), in the manner and form in the within written indenture expressed concerning the same, as and for the consideration or purchase money within mentioned, to be paid by him to me.

A. B. (*grantor*).

WITNESS,

C. D. }
E. F. } of, &c.

to and concerning one equal moiety or half part thereof for the executors, administrators, or assigns of the party who shall first depart this life."

Consideration
transfer of stock.

(102) If the consideration be paid by a transfer of stock, say,

"I do hereby acknowledge that the sum of £ three per cent. consolidated Bank annuities within mentioned to be the consideration or purchase money for the within mentioned annuity, yearly rent charge, or annual sum of £ was this day transferred into my name, in the books of the governor and company of the Bank of England as within is expressed."

Other consi-
derations.

For the forms of receipts for other considerations, see Vol. I. p. 184. Vol. V. p. 85.

Memorial.

. By 53 Geo. III. c. 141, it is enacted (sec. 2), that a memorial of every deed, bond, instrument, or other assurance by which an annuity or rent charge shall be granted for one or

more life or lives, or for any term of years, or greater estate determinable upon one or more life or lives, shall be enrolled in the High Court of Chancery within thirty days next after its execution.

ANNUITIES.

Secured on
Freeholds.
(Full Form.)

Which memorial is to contain :—The date of every such bond, &c. ;—the names of all the parties ;—and of all the witnesses ;—and of the person or persons for whose life, &c. the same shall be granted ;—and of the person or persons by whom the same is to be beneficially received ;—the pecuniary consideration for granting the same ;—and the annual sum or sums to be paid.

Unless (sec. 3) the annuity be granted by or to or for the benefit of any company exceeding ten persons; which shall be formed for the purpose of granting or purchasing annuities, in which case it shall be sufficient if the memorial describe such company by its usual firm or name of trade.

And unless (sec. 10) such annuity or rent charge be given by will or marriage settlement; or for the advancement of a child; or be secured on freehold or customary or copyhold lands in Great Britain or Ireland, or in any of his Majesty's possessions beyond the seas, of equal or greater annual value than the annuity (over and above any other annuity, and the interest of any principal sum secured or charged thereon of which the grantee had notice at the time of the grant) whereof the grantor is seised in fee-simple or fee-tail in possession; or the fee-simple whereof in possession he is entitled to charge; or the said annuity be secured by the actual transfer of stock in any of the public funds, the dividends whereof are of equal or greater annual value; or unless it be granted without regard to any pecuniary consideration or money's worth; or be granted by a corporation, or under an authority or trust created by act of Parliament. For the form of memorials of annuities see WILDE'S SUP. Vol. II. No. CXXX. and *post*, rider (N).

As the late stamp act of 53 Geo. III. c. 141, requires an *ad valorem* Stamp. duty to be imposed upon every conveyance, whether it be by grant or any other kind or description of assurance whatsoever, upon the sale of any lands, tenements, *rents*, *annuities*, or other property, real or personal, it will be requisite that this deed should be stamped according to the amount of the consideration money paid for the annuity.

* * The propriety of searching for judgments, &c. previously to the completion of any pecuniary negotiation, has been already noticed, see Vol. I. INTRODUCTION, p. lix, and this is peculiarly Searching for judgments.

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From what
time search
to be made.

requisite in an annuity transaction, as the circumstance of the grantor having recourse to this ruinous expedient for the raising of money necessarily induces a suspicion that his property has been already resorted to in some way or other.

These are usually searched for from the time only when the grantor or his ancestors purchased the estate; but this cannot, in general, be considered as sufficient; for a judgment entered up against the grantor or his ancestors will bind land afterwards acquired, and consequently be a lien upon them in the hands of subsequent grantees. Vide 1 Roll. Ab. 892, pl. 14, 16. 2 *ib.* 472, P. pl. 3. Shep. P. C. 305. *Hickford v. Machin*, Wiach, 84. *Brace v. Duke of Marlborough*, 2 P. Wms. 429. The search should, therefore, be continued until a recovery, fine, or other act has been done, by which such incumbrance would be barred or avoided, or a term or other legal estate be found in a trustee which can be gotten in, and vid. Sudg. V. and P. 334. 2 Pow. Mortg. 608. *Hunt v. Coles*, Com. 226, and see *Higgins v. York Buildings Company*, 2 Atk. 107, also Vol. I. INTRODUCTION, p. lix, and INTRODUCTION to the present volume.

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(A) Variations *where the Consideration is other than Money paid down.* See *ante*, p. 19, n. (17).

If the annuity be granted in pursuance of a prior agreement, or part of the consideration money has been previously paid, Part of consideration previously paid.
say,

“ In consideration of the sum of £ part of the said purchase money, or sum of £ to the said (*grantor*) heretofore in hand well and truly paid [*or at the time of the execution of the said in part recited agreement*] by the said (*grantee*) and of the further sum of £ being the residue and in full of the said purchase or consideration money to the said (*grantor*) in hand well and truly paid by the said (*grantee*) at the time of the sealing and delivery of these presents, the receipt whereof,” &c.

If the consideration be a debt previously owing to the grantor, Consideration a previous debt.
say,

“ NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement on the part of the said (*grantor*) and for and in consideration of the sum of £ of lawful money of Great Britain, now justly due and owing (1) by the said (*grantor*) to the said (*grantee*) on the securities of the said premises, [*or upon or under a bond, &c. as the case may be*] at the time of the sealing and delivery of these presents (and which the said (*grantor*) doth hereby expressly acknowledge) and of the release and acquittance for the same hereinafter contained, and of the said bond, &c. (*as the case may be*) being delivered up to be can-

(1) An antecedent debt was a good consideration even under the old annuity act (17 Geo. III. c. 26), see *Kelfe v. Ambrose*, *Shore v. Webb*, 1 Durnf. and E. 732.

ANNUITIES. celled. [And in consideration also of the sum of five shillings
 of like lawful money to the said (*grantor*) in hand paid by
 the said (*grantee*) at the time of the sealing and delivery of
 these presents, the receipt whereof is hereby acknowledged,]
 He the said (*grantor*) Hath," &c. as *ante*, p. 19.

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Consideration a
bill of exchange.

If the consideration for the annuity be paid by a bill or bills
of exchange, say,

"In consideration of the sum of £ of lawful
money of Great Britain to the said (*grantor*) in hand well
and truly paid by the said (*grantee*) at or immediately before
the sealing and delivery of these presents, in the manner
following, (that is to say) by one good bill of exchange,
bearing date the day of drawn by the said
(*grantee*) upon A. B. of, &c. for the said sum of £
and payable to the said (*grantee*) or order months
after date, and indorsed by the said (*grantee*) to the said
(*grantor*) (*or as the case may be*) and [*if so*] the sum of
£ in lawful and current money of England for interest
upon the said bill of exchange, after the rate of £5 per
cent. per annum, computed from the day of the date of
these presents until the day of payment thereof, the receipt
whereof," &c.

Promissory note. If by a promissory note, say,

"By a promissory note under the hand of the said
(*grantee*) bearing even date with these presents, for the
sum of £ payable to the said (*grantor*) or his order
months after date, being the said sum of £
together with interest computed thereon, after the rate of
£5 per cent. per annum, from the date thereof until the day
on which the same shall become payable, the receipt
whereof," &c. (1).

(1) It may here be noticed, that by 6th sec. of 53 Geo. III.
c. 141, it is enacted, that if any part of the consideration for an
annuity be bills or notes, and they with the privity and consent
of the grantee shall not be paid when due, the securities may

If the consideration be a transfer of money in the funds, **ANNUITIES.**
say,

“ In consideration of £ three per cent. consolidated bank annuities to the said (*grantor*) this day well and truly transferred by the said (*grantee*) unto and in the name of the said (*grantor*) in the books of the governor and company of the Bank of England, as appears by a certificate thereof under the hand of one of the cashiers of the Bank, the receipt and transfer thereof (so far as appears by the said certificate) the said (*grantor*) doth hereby acknowledge, and which he doth accept as for and in lieu of the value or market price thereof,” &c.

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Transfer of
stock.

Where the consideration is the redemption of a former annuity, say,

Repurchase
of former annuity.

“ In consideration of the sum of £ of, &c. to the said (*former grantee*) well and truly paid by the said (*present grantee*) at or immediately before the sealing and delivery of these presents, by the direction of the said (*grantor*) testified by his being a party to, and sealing and delivering these presents, in re-purchase and extinguishment of the said annuity or yearly rent charge of £ so granted to him the said (*former grantee*) in or by the hereinbefore in part recited indenture of the day of as aforesaid, and (*if the case be so*) of the further sum of £ of like lawful and current money at the same time in hand well and truly paid by the said (*present grantee*) to the said (*former grantee*) by the like direction, and so testified as aforesaid, in lieu of notice being given by the said (*grantor*) of his intention to repurchase the said annuity, making together the sum of £ the receipt of which said sum of £ and that the same is in full of or

be set aside ; indeed money, or its actual and immediate value, should alone be given for the purchase of annuities ; see *ante*,
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for the repurchase and extinguishment of the said annuity or yearly rent charge of £ so granted or secured to him as aforesaid, [and of all arrears thereof and of all claims and demands whatsoever, which he now hath or may have, under or by virtue of the said in part recited indenture, or of any collateral or other security for the payment thereof] he the said (*former grantee*) doth hereby expressly acknowledge," &c.

Consideration
paying off a
mortgage.

If the consideration money be paid by the grantee in discharge of a subsisting mortgage, say,

" In consideration of the sum of £ of lawful, &c. to the said (*mortgagee*) in hand well and truly paid by the said (*grantee*) at or immediately before the sealing and delivery of these presents, with the privity and at the nomination of the said (*grantor*) testified by his being a party to and sealing and delivering these presents, being in full payment and satisfaction of all principal, interest, and other monies now due to him, the said (*mortgagee*) upon or in respect of the hereinbefore in part recited mortgage, the said (*mortgagee*) doth hereby acknowledge; and (*if so*) also for and in consideration of the further sum of £ of like lawful money, being the residue and in full of the said consideration or purchase money to the said (*grantor*) at the same time in hand paid by the said (*grantee*) the receipt whereof, the (*grantor*) doth hereby acknowledge," &c.

Consideration
resigning business.

If the consideration be for resigning the business of the grantor in favour of the grantee, after reciting

" That the said (*grantee*) is established at, &c. in the business or trade of, &c. that he has agreed to resign the same, with the good will and connexions thereof, to the said (*grantor*) in consideration of a clear annuity, or yearly sum of £ to be paid to him during his life by the said (*grantor*) at and in such times and manner, and to be so secured as hereinafter is mentioned."

And

" That the said (*grantee*) by indenture already prepared and engrossed, and bearing or intended to bear even date

with these presents, and made or intended to be made **ANNUITIES.**
 between the said (*grantee*) of the one part, and the said
 (*grantor*) of the other part, (*or as the case may be*) hath as-
 signed the said trade or business to or in favour of the said
 (*grantor*) with such covenants as therein are contained for
 ensuring to him the benefit thereof," say,

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"Now, &c. That in consideration of the said in part re-
 cited indenture, bearing, or mentioned or intended to bear
 even date with these presents, and of the assignment and
 assurance, and covenants, stipulations, and agreements there-
 in contained by and on the part of the said (*grantee*) his
 heirs, executors, and administrators, to be performed or ob-
 served, He the said (*grantor*) Hath," &c. as *ante*, p. 19.

If the consideration be the sale of an estate, or the like, say, **Consideration
 sale of an
 estate.**

"Now THIS INDENTURE WITNESSETH, that in pursuance
 and performance of the said agreement on the part of the
 said (*grantor*) and for and in consideration of the sale of
 certain lands and hereditaments (*or as the case may be*) si-
 tuated, &c. and of certain indentures of lease and release,
 already prepared and engrossed, the lease bearing or intended
 to bear date the day next before the day of the date of the
 release, and the release bearing or intended to bear even
 date herewith, and made or intended to be made between
 the said (*grantee*) of the one part, and the said (*grantor*) of
 the other part, and intended to be executed immediately
 before the sealing and delivery hereof, and of the covenants,
 declarations, and agreements therein contained on the part
 of the said (*grantee*) and his heirs(1), He the said (*grantor*)
 HATH," &c. as *ante*, p. 19.

(1) As the last annuity act of 53 Geo. III. c. 141, extends to **Enrolment.**
 annuities granted, not only for a pecuniary, but for any other
 valuable consideration, or money's worth, a consideration of the
 above kind will make it necessary that the securities should be
 enrolled. See sec. 10, of the act, *ante*, p. 73.

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If the consideration be paid by two or more grantees, say,

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Money paid by
two or more
grantees.

“ NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement on the part of the said (*grantor*) and for and in consideration of the sum of £ of lawful money, &c. to him the said (*grantor*) in hand well and truly paid by the said (*one grantee*) at or immediately before the sealing and delivery of these presents, in part of the said purchase or consideration money of £ , and in full for the purchase of one undivided moiety or half part (the whole into two equal parts being considered as divided) of and in the said annuity, yearly rent charge, or annual sum of £ , the receipt whereof as and for such purchase as last aforesaid the said (*grantor*) doth hereby acknowledge, and of and from the same doth by these presents release and for ever discharge the said (*one grantee*) his heirs, executors, administrators, and assigns. AND also for and in consideration of the further sum of £ of like lawful and current money to the said (*grantor*) at the same time in hand well and truly paid to the said (*other grantee*) as and for the purchase of the other or remaining undivided moiety or half part of the same annuity, yearly rent charge, or annual sum of £ the receipt whereof the said (*grantor*) doth hereby acknowledge, and of and from the same, by these presents, acquit, release, and for ever discharge the said (*other grantee*) his heirs, executors, administrators, and assigns, HE the said (*grantor*) HATH,” &c.

Brevity.

Or the payment, if made by the grantees in equal moieties, may for brevity sake be expressed as *ante*, Vol. I. No. XXVI. p. 383.

Several grantees.

And where the annuity is purchased by two grantees for their respective benefit, in the proportion of the consideration advanced by them, there is usually added (see *ante*, Vol. V. p. 363, n. (1)), a proviso

“ THAT it is hereby agreed and declared by and between the said (*grantees*) that the said annuity, yearly rent charge, or annual sum of £ hereinbefore granted, or secured as aforesaid, as to one moiety or equal half part thereof,

(the whole into two equal parts being considered as divided) so long as the same shall subsist, and of the money to be paid for the repurchase thereof, if the same shall be repurchased, is and shall be considered to belong to and be the sole and exclusive property of the said (*one of the grantees*) [his executors, administrators, and assigns] and that no benefit or right of survivorship or accruer, shall be taken or had by either of them, or the executors, administrators, or assigns of either of them, in respect of the said annuity, yearly rent charge, or annual sum of £ hereinbefore granted or secured, or any part thereof, but that the survivor of them the said (*grantees*) his executors, or administrators, shall stand possessed of and interested in the said annuity or yearly rent charge, and the securities for the same, and the repurchase money thereof, IN TRUST as to and concerning one moiety or equal half part thereof, for the executors or administrators of the party dying first, in the same manner as such deceased party would have been entitled to the same if living."

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Or if it be agreed that there shall be benefit of survivorship between them, say, Benefit of survivorship.

"THAT full benefit of survivorship and accruer shall be had and enjoyed by each of them the said (*grantees*) in respect of the said annuity, yearly rent charge, or annual sum of £ and in case of the death of either of them in the lifetime of the other of them, the whole of the said annuity, yearly rent charge, or annual sum of £ shall immediately upon his decease, belong and be paid and payable to the survivor of them the said (*grantees*) or his assigns, for his or their own use and benefit, any rule or construction of law or equity to the contrary in anywise notwithstanding; and the receipt of such survivor, or of his executors, administrators, or assigns, shall be a good and sufficient discharge for the whole thereof accordingly. PROVIDED ALWAYS nevertheless, (*if so agreed*) that in case the said annuity, or any part thereof, shall be repurchased by the said (*grantor*) his heirs, executors, or administrators, then and

ANNUITIES. in such case the sum or sums of money which shall or may be paid for the repurchase thereof, or of any part thereof, shall be paid and belong unto and be the property of them the said (*grantees*) respectively, or of their respective executors, administrators, or assigns, in equal moieties, [or in proportion and according to the sums by them the said (*grantees*) respectively paid or advanced for the purchase of the same.]”

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Consideration
paid on behalf
of several per-
sons.

If the consideration money for the annuity belong to several persons, say,

“AND THIS INDENTURE FURTHER WITNESSETH, and the said (*grantee*) doth hereby acknowledge and declare, that the said sum of £ hereinbefore mentioned to be paid by him to the said (*grantor*) as and for the consideration money for the purchase of the said annuity, or yearly sum of £ hereby granted, was the proper monies as well of the said and as of him the said (*grantee*) in the several proportions following (that is to say) the sum of £ part of the said sum of £ was the proper monies and estate of him the said ; the sum of £ further part of the said sum of £ was the proper monies and estate of the said ; and the sum of £ residue of the said sum of £ was the proper monies and estate of the said , and that he the said (*grantee*) is and standeth possessed of and interested in the said annuity or yearly sum of £ on behalf of and upon trust for, and the same annuity is to be beneficially received by him the said (*grantee*) his executors, administrators, and assigns, and the said and respectively, according and in proportion to the monies so respectively advanced and paid by them as aforesaid. AND the said (*grantee*) for himself, his heirs, executors, and administrators, doth hereby covenant, declare, and agree with and to each of them the said and and their respective executors, administrators, and assigns, that he the said (*grantee*) his executors and administrators, shall and will well and truly pay, or cause to be paid, unto the said and such proportion of the said annuity of £

as they are or shall be entitled to receive, according to the monies so advanced and paid by them respectively. And that in case the same shall be repurchased, he the said (*grantee*) his executors or administrators, shall and will well and truly pay, or cause to be paid, unto the said and such proportion of the monies to be paid by the said (*grantor*) his executors or administrators, for the repurchase thereof as they the said and shall be entitled to according to the monies so advanced by them as aforesaid. AND the said and do hereby declare and direct, that the receipts of the said (*grantee*) his executors, administrators, or assigns, shall be good and sufficient discharges to the said (*grantor*) his heirs, executors, administrators, and assigns, for all monies which shall be paid by him or them to the said (*grantee*) his executors, administrators, or assigns, in respect of the said annuity, or for the repurchase of the same in case the same should be repurchased."

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(B.) Variation *where Part of the Premises are Copyhold.*
See *ante*, p. 35.

Covenant to sur-
render copy-
holds.

If part of the premises to be charged with the payment of the annuity be copyhold, omit the grant of the annuity to issue out of the lands, and add here a covenant to surrender them (1).

“ AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, and for further and more effectually securing the payment of the said annuity or yearly sum of £ at and upon the days and times, and in the manner hereinbefore appointed for payment thereof, HE the said (*grantor*) doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said (*grantee*) his heirs and assigns, that he the said (*grantor*) shall and will at his own proper costs and expense, at or before the next general or other court, which shall be hereafter holden in or for the aforesaid manor of , in the said county of , or other the manor or manors, whereof the lands and hereditaments next hereinafter described, or any of them are holden, and in failure thereof at any other court holden in or for the said manor, when requested by the

(1) Or if they have been previously surrendered, which they in most cases should be, see *ante*, Vol. V. p. 278, n. (2), and *post*, No. VI.; particularly if the grant of the annuity be during the life of the grantee, or the lives of nominees, recite such surrender, as *ante*, Vol. V. p. 276, n. (2), or,

“ AND WHEREAS the said (*grantor*) at a general [*or special*] court this day holden for the said manor of hath duly surrendered into the hands of the lord, according to the custom of the said manor, to the use of the said (*grantee*) ALL, &c. AND it is hereby declared and agreed, that the same was or were intended to be so surrendered, UPON TRUST,” &c. as *supra*.

said (*grantee*) his heirs or assigns, surrender, or cause and procure to be surrendered into the hand of the lord or lords, or lady or ladies of the same manor or manors, according to the custom or several customs thereof, ALL that copyhold or customary messuage, &c. or by whatsoever other name or names, description or descriptions, the same copyhold or customary lands and hereditaments, or any or either of them, are or is, or have or hath been called, known, described, or distinguished; TOGETHER with all and all manner of rights, privileges, easements, advantages, and appurtenances whatsoever to the said messuage or tenement, lands, hereditaments, and customary estate and premises, or any of them, or any part thereof respectively belonging, or in any wise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore lawfully holden, used, occupied, or enjoyed: To the intent that the said (*grantee*) or his heirs, shall or may be fully admitted to all and singular the same copyhold or customary lands and hereditaments, to him and his heirs in the manner hereinafter mentioned. AND it is hereby declared and agreed by and between the said parties hereto, that the surrender or surrenders so to be made as aforesaid, shall, when perfected, be and enure to the use of the said (*grantee*) his heirs and assigns, to be holden of the lord or lady for the time being of the said manor, according to the custom of the said manor, subject only to the customary rents and services to be respectively paid and performed in respect thereof, but nevertheless upon the trusts, and for the several ends, intents, and purposes hereinafter mentioned, that is to say, UPON TRUST, to permit and suffer the said (*grantor*) his heirs and assigns, to receive, retain, take, and enjoy the rents, issues, and profits of the said messuage or tenement, and other the premises hereinbefore covenanted to be surrendered, to and for his and their use and benefit, until default shall happen to be made in payment of the said annuity, or yearly sum of £ , at or upon the days and times, and in the manner hereinbefore appointed for payment thereof; and in case the said annuity, yearly rent charge, or annual sum of £ , or any part thereof,

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Upon trust for
grantor till de-
fault.

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Then by sale,
&c. to pay
arrears of an-
nuity.

shall happen to be in arrear and unpaid by the space of sixty days next after any of the days hereinbefore appointed for payment thereof, then UPON TRUST, that he the said (*grantee*) his heirs and assigns, shall or may by or out of the rents, issues, and profits of the said messuage or tenement, and other the premises hereinbefore covenanted to be surrendered, or any part or parts thereof, or by sale or mortgage thereof, or any part or parts thereof, or by all and every or any one or more of the said ways and means, or by any other lawful ways and means whatsoever, at his or their discretion, raise and levy such sum and sums of money as shall be sufficient to pay and satisfy the said annuity, yearly rent charge, or annual sum of £ , or so much thereof as shall be then due and in arrear, together with all such sum and sums of money, losses, costs, charges, damages, and expenses, as he the said (*grantee*) his heirs and assigns, shall have paid, sustained, expended, or been put unto, for or by reason or means of the non-payment of the said annuity, or yearly sum of £ , at or upon the days or times, or in the manner hereinbefore appointed for payment of the same, or in the performance of all or any of the trusts of these presents, and from and after full payment, satisfaction, and discharge of the said annuity, or yearly sum of £ , and all arrears thereof, and all costs, charges, damages, and expenses attending the execution of the said trusts; THEN upon trust, that he the said (*grantee*) his heirs and assigns, shall stand seised and possessed of the said copyhold or customary messuages, lands, and hereditaments, and other the premises hereinbefore covenanted to be surrendered, or so many and such part thereof as shall not have been so sold or disposed of as aforesaid. In trust for the said (*grantor*) his heirs and assigns."

And see also *post*, No. VI.

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(C.) Variations where the Annuity is to be subject to Abatement. See ante, p. 64.

Proviso for reducing the annuity on punctual payment, &c. (1).

Proviso for reducing the annuity on punctual payment.

“ PROVIDED ALWAYS NEVERTHELESS, and it is hereby declared and agreed to be the true intent and meaning of these presents, and of them the said (*grantor*) and (*grantee*) respectively, and the said (*grantee*) doth hereby for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree with and to the said (*grantor*) his heirs, executors, and administrators, in manner following, (that is to say) that (2) if the said (*grantor*) [his heirs, executors, or administrators, (3)] do, and shall, and from henceforth well and truly pay, or cause to be paid unto the said (*grantee*) his executors, administrators, or assigns,

(1) A proviso for reducing an annuity upon punctual payment is too benevolent a clause to be very usual; but as the amount of the annuity is frequently increased by any improbability which is supposed to exist of its not being regularly paid, it seems to be a reasonable indulgence in favour of the grantor; and where the receipt of the annuity at the precise time stipulated, is at all essential to the convenience of the grantee, there is great probability of its operating equally beneficially to both parties.

Redaction of annuity.

(2) If there be any property tax in being, add,

Property tax.

“ In case the tax or duty now or hereafter payable for or on account of property or income, under or by virtue of the act of the year of the reign of his present majesty, shall be discontinued or withdrawn, or abated or diminished during the subsistence of the said annuity, yearly rent charge, or annual sum of £ then and in such case.”

(3) If the annuity be during the life of the grantor, these words should be omitted.

Life of grantor.

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the quarterly payment or sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, of English value and currency, upon or within seven days next after all and each of the several days or times hereinbefore appointed for the payment of the said annuity, yearly rent charge, or annual sum of £ then and in such case, he the said (*grantee*) his executors, administrators, and assigns, shall and will from time to time, receive and accept of such sum of £ in full payment and satisfaction of the said quarterly payment, or sum of £ hereby made payable for or in respect of the said annuity, yearly rent charge, or annual sum of £ and sign and give a good and sufficient discharge for the same, as and in full for the said sum of £ accordingly, and then and in that case, and so long as such quarterly payment, or sum of £ shall be so punctually made, the grant and covenant, and other the declarations and agreements hereinbefore contained for payment of the said quarterly sum of £ on the days and times appointed for payment of the same, shall extend, and be deemed and construed to extend, to the said sum of £ only, and no more, any thing hereinbefore contained to the contrary thereof in any wise notwithstanding, it being the true intent and meaning that the full annual sum of £, but no more, shall at all times, and from time to time, be received and retained by the said for his own use, under or by virtue of these presents. PROVIDED ALWAYS nevertheless, and it is hereby also declared and agreed, that in case (1) the said annuity, yearly rent charge, or annual sum of £ shall

But acceptance
of reduced sum
not to preclude,
&c.

Property tax.

(1) If the property tax is in being, add here,

“ If the said tax or duty, after having been so withdrawn or discontinued, or abated or diminished, shall at any time thereafter be restored or again made payable, or any other tax or duty upon property or income in lieu thereof, then and in such case.”

at any time hereafter be in arrear by the space of a longer period than seven days, from or next after the day or time whereupon the same is hereinbefore made payable, then and in such case the proviso, declaration, or agreement, lastly hereinbefore contained, shall as well as to and in respect of such quarterly payment of the said annuity, yearly rent charge, or annual sum of £ which shall be then due, as of all and every future or other payments thereof, thenceforth be wholly void and of none effect, and then and in such case the said (*grantee*) his executors, administrators, or assigns, shall or lawfully may at all times, and from time to time thereafter, have, demand, recover, and receive the full sum of £ as or for all and every or any future quarterly payment of the said annuity, yearly rent charge, or annual sum of £ in like manner as if the proviso or agreement hereinbefore contained for reducing the same to the said sum of £ had not been made, any thing hereinbefore contained to the contrary thereof, or any previous or intermediate acceptance by the said (*grantee*) his executors, administrators, or assigns, at any time or times, of any payment or payments of the said sum of £ in lieu or full of the said sum of £ in any wise notwithstanding."

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Proviso for abatement of an annuity, on reduction or repeal of the property tax (1), see *ante*, p. 64.

Abatement on
cessation of pro-
perty tax.

"PROVIDED ALWAYS nevertheless, and it is hereby declared and agreed by and between the said (*grantor*) and (*grantee*) respectively, and he the said (*grantee*) hereby for himself, his heirs, executors, and administrators, doth covenant, promise, declare, and agree with and to the said (*grantor*) his executors, administrators, and assigns, in the manner following (that is to say) that in case the tax or duty payable for or on account of property or income, hereinbefore excepted out of the said annuity, yearly rent charge,

(1) Although no property tax is now in being, yet as it is very probable that such a tax will, sooner or later, be again imposed, it was thought right to provide for that event.

ANNUITIES. or annual sum of £ and amounting to the sum of
 £ shall at any time hereafter, during the subsistence
 of the said annuity, be discontinued, or repealed, or abated,
 or diminished by parliament, then and in such case, if the
 said (*grantor*) his heirs, executors, or administrators, do
 and shall from thenceforth well and truly pay, or cause to
 be paid, unto the said (*grantee*) his executors, admini-
 strators, or assigns, so much of the full and clear sum of
 £ as shall remain after deducting the said annual
 sum of £ or such other sum as for the time being shall
 be payable for or by way of property or income tax or duty,
 so and in such manner and to the intent that he the said
 (*grantee*) his executors, administrators, and assigns, shall and
 may at all times during the natural lives of the said (*nominees*)
 or the life of the survivor of them, have and receive a clear
 and net yearly rent charge, or annual sum of £
 freed of all abatements and deductions whatsoever, then and
 in such case, he the said (*grantee*) his executors, admini-
 strators, and assigns, shall and will from time to time re-
 ceive and accept of such clear yearly rent charge, or annual
 sum of £ or other sum to which the said annuity,
 yearly rent charge, or annual sum of £ hereby
 granted shall be reduced, after deducting the said property
 or income tax for the time being, in lieu and full of the said
 annuity, yearly rent charge, or annual sum of £
 hereby made payable, and sign and give a good and suffi-
 cient discharge for the same accordingly, and then and in
 such case the agreements, covenants, and other the declara-
 tions and agreements hereinbefore contained and provided
 for payment of the said annuity or yearly sum of £
 shall, for the time being, extend, and be deemed and con-
 strued to extend, to the reduced sum, annuity, or yearly
 sum of £ any thing hereinbefore contained to the
 contrary thereof in anywise notwithstanding."

Property tax,
(short form.)

Or shorter, thus,

Proviso to be added in case of there being an income tax chargeable on the grantee, see *ante*, p. 64.

"PROVIDED ALWAYS, and it is hereby declared and agreed, that if the said (*grantor*) his heirs, executors, or

administrators, shall and do from time to time, as and when the said annuity, or yearly sum of £ hereby granted or covenanted to be paid, well and truly pay, or cause to be paid, to the said (*grantee*) his executors, administrators, or assigns, the full and clear sum of £ or such quarterly or other portion thereof as shall be then due, without any deduction for or on account of the present or any future tax upon property or income, payable in respect thereof, then and in every such case he the said (*grantee*) his executors, administrators, and assigns, shall and will receive and accept of such clear annuity, or yearly sum of £ or quarterly or other portion thereof, in lieu and full satisfaction of the said annuity, or yearly sum of £ or of the portion then due for the same, and sign and give a receipt and acquittance to the said (*grantee*) his executors, administrators, and assigns, for such last mentioned annuity, or yearly sum, or proportionable part thereof accordingly, any thing hereinbefore contained or implied to the contrary thereof in any wise notwithstanding."

ANNUITIES.

*Secured on
Freeholds.
(Full Form.)*

ANNUITIES.

*Secured on
Freeholds.
(Full Form.)*

(D.) *Assignment of Policy of Insurance against Fire* (1).

See *ante*, p. 46, note 57.

Recital of policy of assurance against fire.

“AND WHEREAS the said (*grantor*) hath caused the messuages or tenements and buildings hereby charged with the payment of the said annuity, [and the furniture and other effects therein], to be insured against loss by fire, in the insurance office, London, for the term of seven years, from the day of last past, in the sum of £ and it hath been agreed by and between the parties hereto, that the benefit of such insurance thereof shall be assigned to the said (*trustee*) in the manner hereinafter mentioned, as an additional security for the payment of the same annuity.

WITNESS, the grantor assigns

NOW THIS INDENTURE FURTHER WITNESSETH, that in pursuance of the said agreement, [and for and in consideration of the sum of five shillings of lawful current money of England, to the said (*grantor*) in hand at the time of the execution hereof paid by the said (*trustee*) (the receipt whereof is hereby acknowledged),] HE the said (*grantor*) at the request and by the direction of the said (*grantee*) testified as hereinbefore is mentioned HATH granted, bargained, sold, assigned, transferred, and set over, and by these presents DOTH grant, bargain, sell, assign, transfer, and set over unto the said (*trustee*) his executors, administrators, and assigns, ALL that deed poll, or instrument in writing, purporting to be a policy of insurance under the hands and seals of three of the directors of the insurance com-

The policy.

(1) It was said in the case of the *Sadlers' Co. v. Badcock*, 2 Atk. 554; and see *Lynch v. Dazrell*, 3 Brow. Par. Ca. 497, that policies of assurance are not in their nature assignable, nor intended to be transferred from one person to another without the consent of the office; but quære, unless so stipulated in the policy.

pany, in the city of London, and numbered whereby **ANNUITIES.**
 the messuages, or tenements and buildings hereinbefore
 demised and charged with the payment of the said annuity,
 yearly rent charge, or annual sum of £ or mentioned
 or intended so to be, were or are expressed to be insured by
 the said company against loss by accidental fire to the
 amount of £ . . . And also all and every the sum and
 sums of money which shall or may at any time be or become
 due and recoverable upon or by virtue thereof, and all other
 benefit and advantage incident thereto, or to be had or
 derived therefrom. And all the estate, right, title, and
 interest whatsoever of him the said (*grantor*) in and to the
 same, together with full power and authority, in the name
 or names of him the said (*grantor*) his executors or admini-
 strators, as the attorney of him the said (*grantor*) his exe-
 cutors and administrators, or otherwise, as circumstances
 shall require, to ask, demand, sue for, recover, and re-
 ceive, and give effectual receipts and discharges for all and
 every the sum and sums of money which shall or may be
 payable by virtue thereof. To HAVE AND TO HOLD, receive,
 perceive, take, and enjoy the said deed poll, instrument, or
 policy of insurance, sum and sums of money, and all and
 singular other the premises hereby assigned, or mentioned
 or intended so to be, unto the said (*trustee*) his executors,
 administrators, and assigns, upon the trusts, and to and for
 the ends and purposes hereinafter expressed concerning the
 same. And the said (*grantor*) doth hereby for himself, his
 heirs, executors, and administrators, further covenant, pro-
 mise, and agree with and to the said (*grantee*) and (*trustee*)
 and each of them, and their respective executors, admini-
 strators, and assigns, that he the said (*grantor*) his heirs,
 executors, and administrators, shall and will from time to
 time during the continuance of the said annuity; yearly rent
 charge, or annual sum of £ well and truly pay or
 cause to be paid to the said insurance office or company, all
 such annual and other premium or premiums, and other
 sum or sums of money which shall from time to time or at
 any time be payable for keeping the said policy on foot, and

*Secured on
Freeholds.
(Full Form.)*

To hold to the
trustee upon
trust, &c.

Covenant by
grantor to keep
policy on foot.

ANNUITIES.

Secured on
Freeholds.
(Full Form.)

In default
grantee may
insure.

Application of
insurance
money.

also shall and will, from time to time, at the request of the said (*trustee*) and (*grantee*) or either of them, or their respective executors, administrators, or assigns, produce and shew unto him or them, receipts and sufficient vouchers for all and every such payment or payments; AND also that in case the said (*grantor*) his heirs, executors, or administrators, shall neglect or refuse to make such payment or payments, or to produce such receipts or vouchers as aforesaid, it shall be lawful for the said (*trustee*) or (*grantee*) or their respective executors, administrators, or assigns, at any time or times to pay such sum or sums of money as shall be requisite to keep the said messuages, or tenements and buildings, insured from loss or damage by fire, in the said sum of £ and that he the said (*grantor*) his heirs, executors, or administrators, shall and will from time to time on demand, well and truly pay, or cause to be paid; unto the said (*grantee*) his executors, administrators, or assigns, all and every the sum and sums of money which shall be so paid or advanced by him or them, with interest for the same, after the rate of £5 per cent. per annum, from the time or respective times of paying the same; and that in case of default in payment thereof, or of any part thereof, the same shall be considered a charge, and chargeable upon the lands and hereditaments hereby demised, and it shall be lawful for the said (*grantee*) or (*trustee*) their respective executors, administrators, and assigns, by all or any of the ways and means hereinbefore given or mentioned for recovering the arrears of the said annuity, yearly rent charge, or annual sum of £ or other lawful means whatsoever, to levy, raise, and pay the same. AND it is hereby agreed and declared, that in case the said messuages, tenements, or buildings, or any of them, or any part thereof, shall at any time or times during the continuance of the said annuity, yearly rent charge, or annual sum of £ be burnt down, destroyed, or damaged by fire, then and in such case, and so often as the same shall happen, all such sum and sums of money as shall or may be recovered or received by virtue of any such insurance as aforesaid, shall be laid

out and expended in the re-building or repairing (as the case may require) the said messuages and premises, or such part thereof as shall be so burnt down, destroyed, or damaged; or (at the request of the (*grantee*) his executors, administrators, or assigns, if the same shall be paid down by the said insurance office), and after payment thereof of all arrears of the same annuity, yearly rent charge, or annual sum, and all costs and expenses in respect thereof, shall be invested in the purchase of such bank or other annuities or government securities as the said (*grantee*) his executors, administrators, or assigns, shall think fit, in the name or names of a trustee or trustees to be by him or them named, upon or for such or the like trusts, ends, intents, and purposes as are hereinbefore declared or expressed concerning the sum or sums to arise by sale, mortgage, or other disposition of the said hereditaments, under or by virtue of the power or authority hereinbefore contained in that behalf, or such other trusts and in such manner and form as the counsel in the law of the said (*grantee*) his executors, administrators, and assigns, shall reasonably require or advise, for the purpose of securing and keeping down the said annuity, yearly rent charge, or annual sum of £ at the times and in the manner hereinbefore appointed for payment thereof, according to the true intent and meaning of these presents. [AND the said (*grantor*) doth hereby make, constitute, and appoint the said (*trustee*) his executors, administrators, and assigns, his true and lawful attorney and attornies for receiving all and every sum and sums of money which may at any time or times be payable for or by virtue of such insurance as aforesaid, with full power to appoint any other person or persons in his or their stead; and doth hereby expressly declare that the receipt and receipts of the said (*grantee*) his executors, administrators, or assigns, or of his or their attorney or attornies, shall from time to time, and at all times, be a good, sufficient, and effectual discharge for any sum or sums which shall be payable, or paid to him or them, for or in respect of any such insurance as aforesaid, which said power or authority last hereinbefore given to the

ANNUITIES.

Secured on
Freeholds.
(Full Form.)

Letter of attorney to receive insurance money.

ANNUITIES. said (*grantee*) his executors, administrators, or assigns, he
the said (*grantor*) shall not nor will at any time hereafter,
during the continuance of the said annuity, yearly rent
charge, or annual sum of £ or the subsistence of
any arrears thereof, revoke or in any manner cancel or make
void without the consent in writing of him the said (*grantee*)
his executors, administrators, or assigns, in that behalf.]”

Secured on
Freeholds.
(Full Form.)

ANNUITIES.

Secured on
Freeholds.
(Full Form.)

(E.) *A Covenant by the Grantor to keep the Premises in Repair, and insured against Fire.* See ante, p. 46, 47, note.

“AND moreover that he the said (*grantor*) his heirs, executors, or administrators, from time to time, and at all times, so long as the said annuity, yearly rent charge, or annual sum of £ shall subsist and be payable, or any arrears thereof shall remain due and unpaid, shall and will well and sufficiently repair, and keep in good and substantial repair and condition, all and every the messuages or tenements, and buildings now or hereafter standing or being upon the lands and hereditaments hereby made chargeable with the payment thereof. AND also at his and their own proper costs and charges, insure or cause to be insured in the insurance office, or some other public insurance office in London or Westminster, to be named or approved of by the said (*grantee*) his executors, administrators, or assigns, all and every the same messuages or tenements, and buildings, in the full sum of £ in the joint names of the said (*grantor*) or (*grantee*) and (*trustee*) [his executors, administrators, or assigns,] during the subsistence of the said annuity or any arrears thereof; and shall and will from time to time produce and show forth unto him the said (*trustee*) his executors, administrators, or assigns, if required, the vouchers and acquittances for the premiums, or other sum or sums of money from time to time paid for such insurance or insurances. AND in case the said (*grantor*) [his heirs, executors, or administrators,] shall neglect or omit to repair, or keep in repair the said premises, or any part thereof, or to make or keep on foot such insurance or insurances, or to produce such receipts or vouchers as aforesaid, then it shall be lawful for the said (*grantee*) or (*trustee*) his executors, administrators, or assigns, to repair or cause to be repaired, and insure or cause to be insured, the same or any part thereof. AND further, that he the said (*grantee*) his executors or administrators,

Covenant by
grantor to repair

and insure.

Grantee may
insure or repair
on grantor's
neglect.

ANNUITIES.

*Secured on
Freeholds.
(Full Form.)*

Insurance
money to be
laid out in re-
building.

shall and will upon demand in writing by and under the hand of the said (*grantor*) his executors, administrators, or assigns, pay and reimburse all such sums as shall have been so by him or them expended in or for such repairs or insurance, and in default thereof he the said (*grantor*) his executors, administrators, and assigns, shall and may retain and reimburse himself and themselves the costs, charges, and expenses of doing such repairs or effecting such insurance or insurances (together with interest after the rate of £5 per cent. per annum, in the mean time) by the same or like ways and means of entry and distress, sale, mortgage, or otherwise, as the said annuity, yearly rent charge, or annual sum of £ is hereby provided to be levied, or raised, if in arrear. AND it is hereby further declared and agreed that in case the said messuages or tenements and buildings, or any part thereof, shall be burnt down, destroyed, or damaged by fire, then and in such case all and every such sum or sums of money as shall or may be recovered or received upon or by virtue of any such policy or policies as aforesaid, shall at the request or with the consent of the said (*grantee*) his executors, administrators, or assigns, be laid out and expended in the rebuilding or repairing the same (*as the case may require*), or at the request, &c. shall and will," &c. as *ante*, p. 95, marg. *.

ANNUITIES.

Secured on
Freeholds.
(Full Form.)

(F.) *Appointment of a Receiver of Rents.* See *ante*, p. 57,
n. (82).

“ AND THIS INDENTURE FURTHER WITNESSETH (1), that for the considerations aforesaid, and for the further, better, and more effectually securing the regular and punctual payment of the said annuity, yearly rent charge, or annual sum of £ unto the said (*grantee*) his executors, administrators, and assigns, at the days and times, and in the manner hereinbefore [and in and by the condition of the said in part recited bond] mentioned for payment thereof, HE the said (*grantor*) at and by the request, nomination, and appointment of the said (*grantee*) (testified by his being made a party to, and signing and sealing these presents,) HATH made, deputed, constituted, and appointed, and by these presents DOTH make, depute, constitute, and appoint, and in his place and stead put the said (*receiver*) his receiver, agent, and lawful attorney irrevocable in the name of him the said (*grantor*) his heirs, executors, administrators, or assigns, from and after any payment of the said annuity, yearly rent-charge, or annual sum of £ shall be in arrear by the space of days next after the same ought to be paid, to ask, demand, and receive of and from all and every the tenant and tenants, now holding and occupying, or who during the con-

Appointment by
grantor of re-
ceiver of rents,
&c. of the pro-
mises.

(1) The appointment of a receiver of the rents, &c. of the lands chargeable with the payment of the annuity, is sometimes made by a separate instrument, which is generally the most convenient mode, as it prevents there being occasion for his having a counterpart of the grant, or being intrusted with or exposing the original; for the form of such a deed, see WILDER'S SUPPLEMENT, Vol. I. No. XIV. p. 110: this appointment may be inserted after the variation *ante*, p. 57, n. 82.

Appointment of
receiver of se-
parate deeds.

ANNUITIES.

**Secured on
Freeholds.
(Full Form.)**

**Power to enter
and distrain, &c.**

and apply rents,
&c.

upon trust, after
payment of
taxes and ex-
penses,

tinuance of the said annuity, yearly rent-charge, or annual sum of £ shall or may for the time being hold, or occupy all or any part of the messuagēs or tenements, lands and hereditaments, hereby charged with the payment thereof, all and every the rents and profits which are, or shall or may be reserved, or shall from henceforth become due or payable, for or in respect of the same premises; and in default of payment thereof, or of any part thereof, in the name of him the said (*grantor*) [his heirs, executors, administrators, or assigns,] to enter into and upon all or any of the said messuages or tenements and hereditaments, and there to distrain for the same, and to dispose of the distress or distresses which shall be there taken, according to due course of law; and also in the name of him the said (*grantor*) [his heirs, executors, administrators, and assigns,] to sue for and prosecute in any of the courts of law or equity, all and every or any of the said tenant or tenants, whose rent or rents shall at any time be so in arrear; and generally to do all and every other act, matter, and thing whatsoever, for the collecting, receiving, and getting in the said rents and profits, and every or any part thereof, as fully and effectually to all intents and purposes as he the said (*grantor*) [his heirs, executors, or administrators,] might or could do, or cause to be done, if personally present; he the said (*grantor*) [for himself, his heirs, executors, and administrators,] hereby ratifying, confirming, and allowing, and agreeing, at all times, and from time to time, when thereunto required, to ratify, confirm, and allow all and whatsoever the said (*receiver*) shall lawfully do, or cause to be done, in or concerning the premises, under or by virtue of these presents. AND it is hereby declared and agreed that the said rents and profits, when so received, shall be had and holden by him the said (*receiver*) upon the trusts, and to and for the ends, intents, and purposes following (that is to say,) IN TRUST, in the first place, to pay and discharge all parliamentary, parochial, and other lawful taxes, assessments, and duties chargeable upon, or payable in respect of the said premises, or any of them; and in the

next place, to retain and satisfy all necessary and reasonable expenses attending the collecting, receiving, or getting in the said rents and profits, [and also a salary or yearly sum of £ for his time and trouble in and about the premises, for so long time as he shall be continued receiver for the purposes aforesaid,] and then, and in the next place, to pay and satisfy unto the said (*grantee*) his executors, administrators, and assigns, the said annuity, yearly rent charge, or annual sum of £ , or so much thereof as shall then, or for the time being, be in arrear and unpaid. AND from and after full payment and satisfaction thereof, THEN UPON FURTHER TRUST, to render and pay all the residue and overplus, if any, of such rents and profits unto him the said (*grantor*) his heirs, [executors, administrators,] and assigns, or otherwise as he or they shall direct or appoint, to and for his and their own proper use and benefit. And the said (*grantor*) doth hereby direct and require all and each of the several tenants of the aforesaid messuages or tenements, hereditaments and premises, to pay unto the said (*receiver*) all and every their respective rents and reservations of or for the said premises, as and when the same respectively shall from time to time become due and payable, under or by virtue of their respective leases or otherwise, and doth hereby declare and agree that the receipts of the said (*receiver*) shall from time to time, and at all times be good, effectual, and sufficient discharges for the same. AND the said (*grantor*) doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said (*grantee*) his executors, administrators, and assigns, that he the said (*grantor*) his heirs, executors, or administrators, shall not nor will during the subsistence of the said annuity, yearly rent charge, or annual sum hereinbefore granted, or any arrears thereof, revoke the appointment hereby made, or the power, authority, or direction hereby given to the said (*receiver*) to collect and receive the aforesaid rents and profits, or to pay, apply, and dispose of the same in the manner and for the purposes aforesaid. AND further, that he the

ANNUITIES.

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Freeholds.
(Full Form.)*

to pay the
annuity,

and surplus to
grantor.

Direction to
tenants to pay
rents to re-
ceiver.

Covenant by
grantor not to
revoke letter of
attorney,

nor receive the
rents.

ANNUITIES.

*Secured on
Freeholds.
(Full Form.)*

Covenant by
receiver to ac-
count, &c.

Power to ap-
point new re-
ceiver in case
of death, &c.

Receiver not to
be answerable
for accidental
losses.

said (*grantor*) his heirs, executors, or administrators, or any person or persons to or for his or their use, shall not or will receive or collect any of the said rents or profits during the time or period last aforesaid, or in any wise prevent or obstruct the said (*receiver*) or any person or persons who shall or may be appointed in his place or stead, by virtue of the power hereinafter contained, in or from receiving the same, or any part thereof. [AND the said (*receiver*) doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said (*grantee*) his executors, administrators, and assigns, that he the said (*receiver*) shall and will from time to time, so long as he shall be continued receiver or attorney for the purposes aforesaid, well and truly pay, apply, and dispose of all and every the rents and profits which shall or may be by him from time to time received from the said premises, or of all or any of the tenants thereof; upon and for such trusts, intents, and purposes, and in such manner as is hereinbefore expressed concerning the same, and according to the true intent and meaning of these presents.] PROVIDED ALWAYS, that in case the said (*receiver*) shall die, or neglect, refuse or decline to act or proceed in the execution of all or any of the trusts aforesaid, during the continuance of the said annuity, yearly rent charge, or annual sum of £ , or any arrears thereof, then and in either of the said cases, he the said (*grantor*) his heirs, executors, or administrators, shall and will, within the space of one calendar month next thereafter; and in default thereof, then it shall be lawful for the said (*grantee*) his executors, administrators, or assigns, forthwith to appoint and authorize any other fit and proper person or persons to be a receiver of, and to collect and get in the rents and profits of the said premises, upon the trusts, and for the purposes aforesaid. AND it is lastly hereby declared and agreed by and between the parties hereto, that the said (*receiver*) or any other person or persons who shall or may at any time or times hereafter be appointed receiver in his place or stead, shall not be answerable or

accountable for any loss or misfortune which shall or may ANNUITIES.
at any time or times happen to the said premises, or to
the monies which shall come to his or their hand or re-
spective hands by virtue of the said presents, unless the
same shall be occasioned by or through his or their own
wilful negligence or default respectively."

*Secured on
Freeholds.
(Full Form.)*

ANNUITIES.

*Secured on
Freeholds.
(Full Form.)*

(G.) *Assignment of an Outstanding Term (1), to a Trustee for the Annuitant. See ante, p. 28, n. (37).*

Recital of deed
creating the
term.

“AND WHEREAS by indentures of lease and release, bearing date respectively the and days of , the release being of parts, and made or expressed to be made between, &c. and purporting to be a settlement made previously to the marriage of the said, &c. (*or as the case may be*), the several messuages, lands, and hereditaments hereinbefore made chargeable with the payment of the said annuity, yearly rent charge, or annual sum of £ were (amongst others) limited in use to the said (*trustees of the settlement*) their executors, administrators, and assigns, for the term of years, UPON TRUST for raising the sum of £ for the portions of the younger children of the said marriage, (*or as the case may be*) and other the purposes therein expressed; and subject thereto, IN TRUST for the person or persons who for the time being should be entitled to the reversion and inheritance of the same premises. AND WHEREAS all and

When assignment proper.

(1) If there be a satisfied term outstanding in a trustee which cannot conveniently be made use of for securing the annuity in the direct manner noticed, *ante*, p. 28, or if the premises be conveyed to the grantee, or his trustee in fee, in addition to such term, any other term or terms which it may be deemed advisable to keep on foot for the benefit of the annuitant, may be assigned for that purpose: this assignment may be inserted at the end of the grant in the form given above, or may be made by a separate instrument, for which see WILDE'S SUPPLEMENT, Vol. I. No. XXXI, p. 255, (and vid. also *ante*, Vol. I. No. XXXVII, p. 401, n. (1)). But the assignment of an outstanding term by the same deed upon trust for securing the annuity is not eligible, as it makes the grant part of the title deeds, and will make it necessary to recite it in a future assignment of the term.

every the trusts, intents, and purposes for which the said settlement was created, have long since been fully performed and satisfied. AND whereas by divers mesne assignments, and other acts in the law, and particularly by an indenture of assignment bearing date the day of which was in the year , and made or expressed to be made between, &c. the said premises were assigned to, and are now vested in, the said (*termor*) for the then and now residue of the said term; IN trust to attend the inheritance of the said premises. AND WHEREAS it hath been agreed that the said term shall be assigned to the said (*trustee*) his executors, administrators, and assigns, for the now residue thereof, upon trust for better securing the payment of the said annuity, yearly rent charge, or annual sum of £ in the manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, [and in consideration of the sum of 10s. of lawful current money of England to the said (*termor*) in hand well and truly paid by the said (*trustee*) at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged,] He the said (*termor*) at the request and by the direction of the said (*grantor*) and at the nomination and appointment of the said (*grantee*) (testified by their severally being parties to, and executing these presents,) HATH bargained, sold, assigned, transferred, and set over, and by these presents DOTH bargain, sell, assign, transfer, and set over, [and the said (*grantor*) HATH granted, bargained, sold, assigned, ratified, and confirmed, and by these presents DOTH grant, bargain, sell, ratify, and confirm] unto the said (*trustee*) his executors, administrators, and assigns, ALL those the said several messuages, lands, tenements, and hereditaments so assigned unto, or otherwise vested in him the said (*termor*) his executors, administrators, and assigns, by the said hereinbefore in part recited indenture of assignment, of the day of as hereinbefore is mentioned; and all the estate, right, title, interest, term and terms for years, yet to come and unexpired, trust, possession, property, claim, and demand whatsoever, both at law and in equity, of him the said (*termor*) of, in, or to the same pre-

ANNUITIES.

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Freeholds.
(Full Form.)

WITNESS,
termor assigns.

Parcels.

ANNUITIES.

Secured on
Freeholds.
(Full Form.)

To HOLD to the
trustee for the
residue of the
term,

in trust to se-
cure annuity.

Then to attend
the inheritance.

Covenant by
termor that he
has not incum-
bered.

mises, and every or any part thereof; together also with the said hereinbefore in part recited indenture of assignment, and all benefit and advantage thereof. To HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and all and singular other the premises hereby assigned, or mentioned or intended so to be, with their and every of their appurtenances unto the said (*trustee*) his executors, administrators, and assigns, from henceforth for and during all the rest, residue, and remainder of the said term of years, yet to come and unexpired therein, [wanting one day only of the said term,] UPON THE TRUSTS nevertheless, and to and for the several ends, intents, and purposes hereinafter declared or expressed of or concerning the same, (that is to say) IN TRUST for the said (*grantee*) his executors, administrators, and assigns for better securing the payment of the said annuity, yearly rent charge, or annual sum of £ and all costs and expenses which may be incurred by reason thereof, and by all lawful and equitable ways and means whatsoever, to have and use the said term and premises for that purpose, and to levy and raise the said monies accordingly and subject thereto, IN TRUST for the said (*grantor*) his heirs or assigns, or such other person or persons, who for the time being shall be seized of, or entitled to the reversion, freehold, and inheritance of the same premises. And the said (*termor*) for himself, his heirs, executors, and administrators, doth hereby covenant and declare, with and to the said (*trustee*) his executors, administrators, and assigns, that he the said (*termor*) hath not at any time or times heretofore made, done, committed, or knowingly occasioned or suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the messuages, lands, tenements, hereditaments, and premises, hereby assigned, or mentioned or intended so to be, or the said term of years therein or any part of the said term or premises, respectively are, or is, or can, or may be surrendered, forfeited, or otherwise become void or voidable, or in any wise impeached, charged, incumbered, or prejudicially affected in estate, right, title, value, or otherwise howsoever."

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(H.) *Covenant to pay off and discharge Premises from subsisting Annuities or other Incumbrances.* See ante, p. 57, n. (81).

“AND WHEREAS the several lands and hereditaments hereby made chargeable with the payment of the said annuity or yearly sum of £ are, by indentures bearing date, &c. charged with the payment of several annuities of, &c. (or as the case may be) making together in the whole the annual sum of £ during the life of, &c. but subject to provisos or agreements in the same indentures respectively contained, empowering the said (*grantor*) to repurchase and extinguish the same upon the terms therein mentioned. AND whereas it was agreed upon the contract for the said annuity or yearly sum of £ hereby granted, that the said several last mentioned annuities should be repurchased and extinguished in pursuance of the said provisos or agreements, and the said annuity or yearly rent-charge of £ and the lands and hereditaments charged therewith be exonerated from the same several annuities or yearly sum within six months next after the date hereof. Now the said (*grantor*) in pursuance of the said agreement, and for the considerations aforesaid, for himself, his heirs, executors, and administrators, doth hereby covenant, declare, and agree, with and to the said (*grantee*) his executors, administrators, and assigns, That he the said (*grantor*) his executors, administrators, or assigns, shall and will within the space of six calendar months next after the day of the date of these presents, repurchase, pay off, and wholly extinguish, or cause and procure to be repurchased, paid off, and extinguished, all and every and each of the said several annuities or yearly sums of £ so charged upon and issuing out of the messuages, lands, and hereditaments hereby made chargeable with the said annuity or

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yearly sum of £ , or intended so to be, as hereinbefore is mentioned, and cause and procure the same messuages, lands, and hereditaments, and every of them, to be wholly and absolutely exonerated, released, and discharged of and from the same several annuities or yearly sums of £ and each and every of them, and of and all and every judgment and judgments, trusts, powers, provisos, declarations, agreements, and remedies whatsoever, which now are, or is, or shall, or may at any time or times hereafter be in force, or subsisting, or capable of taking effect, or of being exercised or put in force upon or against the said messuages, lands, or hereditaments, or any part thereof, for compelling or requiring payment of the same several annuities or yearly sum of £ or of any or either of them, or any arrears or other part or proportion of the same respectively, or otherwise in relation thereto, or to any or either of them."

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(I.) *Power for Grantor to substitute other Premises in lieu of those now charged. See ante, p. 58, note.*

“ PROVIDED always, and it is hereby declared and agreed by and between the parties hereto (according to their several and respective estates and interests) to be the true intent and meaning of them and of these presents, and he the said (*grantee*) doth hereby for himself, his heirs, executors, and administrators, covenant, promise, declare, and agree, with and to the said (*grantor*) his heirs, executors, administrators, and assigns, in the manner following (that is to say) that in case the said (*grantor*) his heirs, executors, administrators, or assigns, shall at any time hereafter be desirous of exonerating the several messuages or tenements, hereditaments, and premises hereby granted and released, or otherwise assured or expressed or intended so to be, or any part thereof, of or from the said annuity or yearly sum of £ hereby granted, and do and shall well and truly substitute, charge, and make liable other lands, hereditaments, and property, of ample and sufficient present yearly rent or value, [or by a transfer into the names of the said (*trustees*) or of other trustees to be appointed in pursuance of the provision hereinafter contained for that purpose, so much bank three per cent. consolidated bank annuities as shall produce the clear annual sum of £ in the room and stead of the same,] to be approved of by the said (*grantee*) his executors, administrators, and assigns, so and in such manner and form as the counsel in the law of the said (*grantee*) his executors, administrators, or assigns, shall advise or require, then and in such case, and from and immediately after such substitution, charge, and liability shall be so made and perfected, he the said (*grantee*) his executors, administrators, and assigns, and every other person then claiming, or having any estate or interest in the said yearly rent charge or annual sum of £ , shall and will at the cost, charge, and expense in all things of () his executors, admini-

ANNUITIES. *Secured on Freeholds. (Full Form.)* strators, or assigns, make, do, and execute, or cause to be made, done, and executed, all such lawful and reasonable acts, deeds, matters, and things in the law or otherwise whatsoever, as shall be requisite or proper for releasing and discharging the several messuages or tenements and premises hereby made chargeable with the payment of the same yearly rent-charge or annual sum of £ of £ of, from, and against the payment of the same, and every part thereof, any thing hereinbefore contained or implied to the contrary thereof in any wise notwithstanding."

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(K.) *Proviso, &c. that if the Annuity shall be repurchased by the Surety, the Purchase Money, or the Annuity, at his Option, shall continue a Charge on the Premises for his Benefit. See ante, p. 58, note.*

“ AND WHEREAS it has been agreed by and between the said (*grantor*) and (*surety*) that in case he the said (*surety*) should redeem or repurchase the said annuity or yearly rent-charge of £ in pursuance of the power hereinbefore contained, or advance to him the said (*grantor*) any sum for that purpose, the said premises hereby charged with the payment of the said annuity shall become a security to him the said (*surety*) for the repayment of the same.

NOW THIS INDENTURE FURTHER WITNESSETH, and it is hereby declared and agreed by and between all and every the parties to these presents, so far as they are respectively interested, that in case the said (*surety*) his heirs, executors, or administrators, shall at any time hereafter repurchase or redeem the said annuity, yearly rent-charge, or annual sum of £ so hereinbefore granted by the said (*grantor*) to the said (*grantee*) as aforesaid, in pursuance or by virtue of the proviso or agreement hereinbefore contained, enabling him in that behalf, or if he the said (*surety*) his heirs, executors, or administrators, shall lend or advance unto the said (*grantor*) his heirs, executors, administrators, or assigns, any sum or sums of money for that purpose, then and in every such case all and singular the messuage or tenement, lands, hereditaments, and premises hereby made chargeable with the payment of the said annuity, yearly rent-charge, or annual sum, shall thenceforth stand charged and be chargeable with all and every the sum and sums of money which he the said (*surety*) his heirs, executors, or administrators, shall pay or advance unto or for the said (*grantor*) his heirs, executors, or administrators, in or towards such repurchase or redemption of the said annuity, yearly rent-charge, or annual sum, or otherwise in

Premises to be
a security for
money ad-
vanced by
surety for re-
purchase.

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Trustee to hold
in trust for
surety.

relation thereto, together with all costs, charges, damages, and expenses, which he or they shall or may sustain, or be put unto in or concerning the same, and also interest for the said sum after the rate of five per cent. per annum, from the time of his or their paying or advancing the same, until repayment thereof; and also that he the said (*trustee*) his executors, administrators, and assigns, shall from thenceforth stand possessed of and interested in the same hereditaments and premises for all the then residue of the said term of years hereinbefore granted, or so much of the said term and premises as shall not have been disposed of for the purposes hereinbefore expressed concerning the same, upon trust for him the said (*surety*) his heirs, executors, and administrators, for securing to him and them the repayment of the said sum and sums, with interest after the rate aforesaid. with full power and authority for him the said (*trustee*) his executors, administrators, and assigns, to use and exercise, and he and they are hereby expressly authorised, empowered, and directed, at all or any time or times, and from time to time, at the request of the said (*surety*) his heirs, executors, or administrators, to use and exercise all and every or any of the same powers and authorities of entry commencing and prosecuting suits and actions, and also of selling, mortgaging, demising, or otherwise disposing of all or any part of the said hereditaments and premises, for the purpose of raising and paying the same, together with the costs and expenses attending the execution of the said trusts as are hereinbefore given to or vested in him and them for raising and paying the said annuity, yearly rent-charge, or annual sum of £ , when and in case the same shall at any time be in arrear, and all and whatsoever he the said (*trustee*) his executors, administrators, or assigns, shall or may lawfully do or cause to be done for all or any of the purposes last aforesaid, he the said (*grantor*) his heirs, executors, and administrators, shall and will ratify, confirm, and allow, and further assure in all things."

Or (*if so agreed*),

Or, annuity to
continue for
surety.

"That in case the said (*surety*) his heirs, executors, or administrators, shall repurchase the said annuity, yearly

rent-charge, or annual sum of £ hereby granted or **ANNUITIES.**
secured as aforesaid, such repurchase shall not be, nor be
considered as an extinguishment thereof, but the same or a
like annuity shall, as between the said (*surety*) his executors,
administrators, and assigns, and the said (*grantor*) his
heirs, executors, and administrators, continue, subsist, and
be payable to him the said (*surety*) his executors, admini-
strators, and assigns, during the natural life of the said
(*grantor*) in like manner and with the same powers and
remedies for compelling payment thereof, in all respects as
before such repurchase was made; and he the said (*grantor*)
his heirs, executors, or administrators, shall and will at and
upon the request of him the said (*surety*) assign, transfer,
and make over, or otherwise assure, the said annuity and all
and every the several securities for the same unto him
the said (*surety*) his executors, administrators, or assigns,
and in such manner and form as he or they shall reasonably
require in that behalf."

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Freeholds.
(Full Form.)*

(L.) Variation *when Judgment is not to be entered up until Default.* See *ante*, p. 62, n. 84.

Judgment not
to be entered
up till default.

“AND WHEREAS it hath been agreed that no judgment shall be entered up upon the said in part recited bond, in pursuance of the said in part recited warrant of attorney, until default shall have been made in payment of the annuity or yearly sum hereby granted. Now THIS INDENTURE FURTHER WITNESSETH, and it is hereby declared and intended by and between the parties to these presents, that no judgment shall be entered up upon the said in part recited bond, by virtue of the aforesaid warrant of attorney, unless, and until the said annuity or yearly sum of £ hereby granted, or some payment thereof, shall be in arrear for the space of twenty-one days next after some or one of the days or times whereupon the same is hereinbefore and in the condition of the said bond appointed to be paid as aforesaid; but that when and immediately, or at any time after the said annuity or yearly sum, or any part thereof, as shall be so in arrear and unpaid, it shall be lawful for the said (*grantee*) his executors, administrators, or assigns, to enter up judgment upon the said bond, and then and immediately, or at any time thereafter, to sue out any such execution, upon or by virtue of the said judgment, as he or they shall think fit, and then, and from thenceforth, and from time to time, and at all times after such judgment shall have been so entered up, it shall be lawful for him the said (*grantee*) his executors, administrators, and assigns, as often as the said annuity or yearly sum of £ shall be in arrear for the space of twenty-one days next after the same ought to be paid as aforesaid, to issue out execution for the recovery of the arrears thereof, and all costs, charges, and expenses which he, she, they, or any or either of them shall have paid, sustained, or been put unto, by reason or means of the non-payment of the same, or any part thereof, or by reason of

any such extra premium or insurance money as aforesaid, and that it shall not be necessary for the said (*grantee*) his executors, administrators, or assigns, to revive, or cause to be revived, any such judgment by writ of *scire facias* or otherwise, nor to do any other act, matter, or thing, to keep the same on foot, notwithstanding the same shall have been entered on record for the space of one year or upwards, or the said (*grantor*) shall be then dead, (if any arrears of the said annuity shall then remain unpaid) but that the said (*grantee*) his executors, administrators, or assigns, shall nevertheless be at liberty and have full and lawful power and authority to issue out any writ or writs of execution upon the said judgment, in like manner as if the same had been received or kept on foot, or the said (*grantor*) were then living, and that he the said (*grantor*) his heirs or administrators, shall not nor will have, take, or receive any advantage for want of the said judgment having been revived or kept on foot, or for want of any such writ or writs as aforesaid, or other proceedings being issued out or had, or by reason of any such defect or omission in respect thereof; and if he or they shall make any endeavour or attempt so to do, this present agreement shall and may be produced and shown in bar thereto, and be and operate as an effectual bar thereto accordingly, any rule or practice of the court in which any such judgment shall have been entered up to the contrary in anywise notwithstanding."

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(Full Form.)

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*Secured on
Freeholds.
(Full Form.)*

(M.) *Covenant for the Production of Title Deeds.*
Variations as in the margin. See ante, p. 71.

Covenant by
grantor to pro-
duce title deeds
not delivered.

“AND WHEREAS the several deeds, muniments, writings, and evidences of title mentioned in the schedule hereunder written, relate not only to the hereditaments hereinbefore expressed to be conveyed to the said (*grantee*) but also to other property of the said (*grantor*) of much greater value, it has been agreed that the same shall remain in the custody of the said (*grantor*) upon his entering into such covenant for producing and delivering attested copies thereof as hereinafter is expressed. NOW THEREFORE the said (*grantor*) for himself, his heirs, executors, and administrators, doth hereby covenant and declare, with and to the said (*grantee*) his executors, administrators, and assigns, that he the said (*grantor*) his heirs and assigns, shall and will from time to time, and at all times hereafter, (unless prevented by fire or other inevitable accident) during the subsistence or continuance of the said annuity or yearly sum of £ , hereby granted or secured at the request in writing, and at the expense of the said (*grantee*) his executors, administrators, or assigns, produce and show forth, under him or them, or as he or they shall reasonably require, in any part of the United Kingdom of Great Britain and Ireland, all and every or any of the deeds, muniments, writings, and evidences mentioned in the schedule hereunder written, and also all and every other deeds, muniments, writings, and evidences, if any, not being of record, which relate unto or in any manner affect the hereditaments and premises mentioned, or intended to be hereby charged with the payment of the said yearly rent, charge, or annual sum, and which now are or hereafter shall or may be in the custody or lawful power of him the said (*grantor*) his heirs or assigns, or which he or they can or may procure without suit at law or in equity, and also make, or cause to be made, and delivered to or for him or them, true and attested copies of the

same, or any of them, for the manifestation, support, defence, or justification of the possession, estate, right, title, or interest of the said (*grantee*) his executors, administrators, or assigns, or his or their trustees or trustee, of, in, to, or respecting the said annuity or yearly sum of £ , or the hereditaments and premises hereby made, or intended to be made, chargeable therewith, or any part thereof. And further, that the said (*grantor*) his heirs, executors, or administrators, shall not nor will at any time hereafter part with or dispose of all or any of the said deeds, muniments, writings, and evidences out of his or their custody or power, without giving unto the person or persons to whom he shall or may part with or dispose of the same notice in writing under his or their hand or hands, of the covenant hereinbefore contained for producing the same as hereinbefore is mentioned."

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If any of the title deeds are mislaid, and therefore cannot be delivered to the purchaser, instead of the preceding covenant, see *ante*, Vol. I. p. 197.

. The following additions may also be made to the deed where the circumstances of the title require it : Other provisions, &c.

· Covenant to get in an outstanding fee, as *ante*, Vol. I. p. 209 ; II. p. 115.

Covenant to get in and assign an outstanding term, see Vol. I. p. 210 ; Vol. II. 117. -

Covenant to pay and indemnify against a fee farm rent, Vol. I. pp. 212. 427 ; Vol. II. p. 119.

Forms of receipts for consideration money to be indorsed, Vol. I. p. 185, *et seq.* Also Vol. V. p. 87, *et seq.*

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No. III.

*Shorter Form of Grant of an Annuity chargeable
upon an Estate of Inheritance during the Life
of the Grantor (1).*

*Variations where it is for the Life of the Grantee or the
Lives of Nominees, &c. &c. as in the Margin below.*

THIS INDENTURE, of parts, made the
 day of , &c. and in the year of our
Lord . BETWEEN (*the grantor*) (2) of, &c.
 of the first part, (*the grantee*) of, &c.
 of the second part, and (*the trustee*) of,
&c. (a trustee named and appointed by and

Brevity.

(1) Should the student doubt the propriety of any of the omissions he may discover in this *shorter* form, the reasons will be found on reference to the corresponding parts of the preceding precedent, No. II. See also notes to that precedent.

Wife.

(2) If the wife of the grantor be entitled to dower out of the lands intended to be made chargeable with the payment of the annuity, see No. II. p. 11, n. (3).

Trustee.

If the grantor took the estate to himself and a trustee, make him a party of the second part.

Tenant in tail.

If the grantor be tenant in tail only of the premises, make the tenant to the præcipe a party of the second part, and see *post*, No. IV. p. 137.

on the part of the said (*grantee*) for the purposes hereinafter mentioned) of the third part (1). WHEREAS (2) the said (*grantor*) is seised in fee simple of the several messuages, lands, and hereditaments hereinafter described (3). AND WHEREAS the said (*grantee*) hath agreed with the said (*grantor*) for the purchase of an annuity or clear yearly sum of £ , for the life (4) of the said (*grantor*) [*or (grantee) or (nominees) of, &c.*] to be paid at the time and in the manner hereinafter mentioned, at or for the price or sum of £ , and be secured by the warrant of attorney (5) of the said (*grantor*) to confess judgment against him in an action of debt for the sum of £ , and to be also chargeable upon the

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Recital of
contract.

(1) If a surety for the grantor be required, make him a party of the third part. Surety.

(2) If the grantor took the estate to himself and a trustee for preventing dower, recite here the deed by which it is so limited to him, stating the power of appointment, nearly verbatim, as *ante*, Vol. II. p. 87. Trustee.

If the grantor be tenant in tail only of the premises, recite here the deed or will by which the estate tail was created, as *post*, No. IV. p. 138. Tenant in tail.

If he be tenant for life only, recite shortly the deed or will by which he derives his title, as *post*, No. V. Tenant for life.

If he be entitled to a moiety, or other portion only of the estate, see Vol. I. No. XXV. p. 382. Moiety, &c.

(3) If part of the premises be copyhold, see *ante*, No. II. p. 12, n. (5). Copyholds.

If the annuity be granted in pursuance of a prior agreement in writing, recite such agreement, as in No. II. p. 13, n. (†). Prior agreement.

(4) If the annuity be granted for a term of years determinable on the decease of the grantor, &c. see No. II. p. 13, n. (6). Years.

(5) If the grantor is also to give a bond for payment, see *ante*, No. II. p. 14, and n. (8); also, p. 17, n. (14). Bond.

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WITNESS, that
in consideration
of the money
paid.

The grantor
grants the
annuity.

lands and hereditaments hereinafter described, in the manner hereinafter expressed (1). AND in pursuance and part performance of the said agreement, the said (*grantor*) hath this day duly executed and given the said warrant of attorney, bearing even date herewith; and it hath been agreed that judgment shall be forthwith entered up in pursuance thereof, but with such stay of execution as hereinafter mentioned. Now THIS INDENTURE WITNESSETH, that in further pursuance and performance of the said agreement, and for and in consideration of the sum of £ of good and current money of that part of the United Kingdom of Great Britain and Ireland called England, to the said (*grantor*) well and truly paid by the said (*grantee*), at or immediately before the sealing and delivery of these presents (*or otherwise as the case may be*) (2), the receipt whereof the said (*grantor*) doth hereby acknowledge, and of and from the same, doth acquit, release, and for ever discharge the said (*grantee*) his executors, administrators, and assigns by these presents, HE the said (*grantor*) HATH given, and granted, and by these presents DOTH for himself, his heirs, executors, and administrators, give,

Copyholds.

(1) If part of the premises be copyhold, and are intended to be demised, recite the licence for demising them, as *ante*, No. II. p. 15, n. (10.)

Surety.

If there be surety for the grantor, see *ibid.* p. 16, n. (11.)

Consideration.

(2) If the consideration be other than money paid down, see *ante*, No. II. p. 75, *et seq.*

Wife.

If the wife of the grantor be a party, see *ibid.* p. 19, n. (18.)

and grant, unto the said (*grantee*) his executors, administrators, and assigns (1), one annuity, or clear yearly sum of £ of such good and current money as hereinbefore is expressed to be issuing and payable, and received, and taken out of and from, and charged and chargeable upon ALL and singular the messuages, lands, tenements, and hereditaments hereinafter described, and intended to be hereby demised with their and every of their appurtenances. To HAVE, HOLD, receive, perceive, take, and enjoy the said annuity or clear yearly sum of £ hereby granted or intended so to be, unto and by him the said (*grantee*) his executors, administrators, and assigns, to and for his and their own proper use and benefit (*or as the case may be*) (2), from the day of the date of these presents, for and during the natural life of the said (*grantor*) [*or grantee*] (*or nominees*) and the life of the survivor of them; and to be paid and payable at or in the common dining hall of the Inner Temple, London, by four equal quarterly payments, between the hours of ten and twelve of the clock in the forenoon

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Issuable out of
freehold pre-
mises.

During the life
of the grantor,
&c.

(1) If the annuity be for the life of the grantee only, say, "And his assigns," instead of "executors, administrators, and assigns," throughout. Life of grantee.

If the annuity be granted to two or more persons as tenants in common, or joint-tenants, see No. II. p. 21, n. (24.)

Several
grantees.

If the annuity be for a term of years determinable on lives, see *ante*, p. 22, notes.

Years deter-
minable on
lives.

(2) If the annuity is not to be received by the grantee beneficially for his own use, see *ante*, p. 22, n. (25.)

Benefit of third
person.

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WITNESS, that
in consideration
of the money
paid.

The grantor
grants the
annuity.

lands and hereditaments hereinafter described, in the manner hereinafter expressed (1). AND in pursuance and part performance of the said agreement, the said (*grantor*) hath this day duly executed and given the said warrant of attorney, bearing even date herewith; and it hath been agreed that judgment shall be forthwith entered up in pursuance thereof, but with such stay of execution as hereinafter mentioned. Now THIS INDENTURE WITNESSETH, that in further pursuance and performance of the said agreement, and for and in consideration of the sum of £ of good and current money of that part of the United Kingdom of Great Britain and Ireland called England, to the said (*grantor*) well and truly paid by the said (*grantee*), at or immediately before the sealing and delivery of these presents (*or otherwise as the case may be*) (2), the receipt whereof the said (*grantor*) doth hereby acknowledge, and of and from the same, doth acquit, release, and for ever discharge the said (*grantee*) his executors, administrators, and assigns by these presents, HE the said (*grantor*) HATH given, and granted, and by these presents DOTH for himself, his heirs, executors, and administrators, give,

Copyholds.

(1) If part of the premises be copyhold, and are intended to be demised, recite the licence for demising them, as *ante*, No. II. p. 15, n. (10.)

Surety.

If there be surety for the grantor, see *ibid.* p. 16, n. (11.)

Consideration.

(2) If the consideration be other than money paid down, see *ante*, No. II. p. 75, *et seq.*

Wife.

If the wife of the grantor be a party, see *ibid.* p. 19, n. (18.)

the natural life of him the said (*grantor*) (or *grantee*) (or *nominees*) and of the survivor, of them together with such profitable part thereof as aforesaid, at the times and in the manner hereinbefore appointed for payment thereof. (1) AND further, that in case the said annuity shall be unpaid for the space of forty days next after any or either of the days or times hereby appointed for payment thereof, it shall be lawful for the said (*grantee*) his executors, administrators, or assigns, (although no demand shall have been made of the same), to enter into and upon all and singular or any of the said hereditaments, and premises, hereby made chargeable with the payment thereof, (without impeachment of waste), and receive and take the rents, issues, and profits thereof, to and for his and their own use and benefit, until he and they shall thereby, or otherwise have been fully paid all arrears of the said annuity, together with all costs, damages, and expenses occasioned by the non-payment thereof. (2) AND THIS INDENTURE FURTHER WITNESSETH (3) that for the considerations aforesaid, and for the

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Power of entry
in case of de-
fault for forty
days.

FURTHER WIT-
NESS, that for
better securing
the annuity,

(1) The usual power of distress is for brevity sake here omitted, see *ante*, No. II. p. 25, n. (33.)

Distress.

(2) If it be agreed that the amount of the annuity shall be reduced on punctual payment, or otherwise, see *ante*, p. 87, rider (C.)

Reduction of
annuity.

(3) If there be an outstanding satisfied term attendant upon the inheritance, see No. II. p. 28, n. (37.)

Outstanding
term.

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the grantor demises the premises to a trustee.

better and more effectually securing the payment of the said annuity, at the times and in the manner hereinbefore mentioned for payment thereof, HE (1) the said (*grantor*) at and by the request and nomination of the said (*grantee*) testified by his being a party to, and signing and sealing these presents, HATH granted and demised, and by these presents, DOTH grant and demise unto the said (*trustee*) his executors (2), administrators, and assigns, ALL, &c. (3), or howsoever otherwise, the said messuages, &c. or any part thereof, are, or is, or heretofore were or was called, known, or distinguished (4); to-

Wife.

(1) If the wife of the grantor be a party, see No. II. p. 28, n. (38.)

Trustee.

If the grantor took the estate to himself and a trustee, see No. II. p. 28, n. (38.)

Tenant in tail.

If the grantor be tenant in tail only of the premises charged with the payment of the annuity, see *ibid.* p. 30, n. (39.)

Tenant in uses.

(2) If the annuity is intended to be secured by a conveyance to the trustee in fee to uses, say "and his heirs," instead of "executors, administrators, and assigns."

Moiety, &c.

(3) If the conveyance be of a moiety or other portion only of the estate, see Vol. I. No. XXV. p. 385.

Parcels.

Insert here an accurate description of the lands, &c. intended to be demised, by their ancient and present name, situation, tenancy, &c. See Vol. I. No. XV. p. 128, n. (13.) p. 405, n. (†.) And for descriptions applicable to different kinds of real property, see INDEX, *voce* PARCELS.

Copyholds.

(4) If any part of the lands intended to be demised be copyhold and intermixed with the freeholds, and the grantor have no licence to demise them, see No. II. p. 31, n. (42.)

rent-charge, or annual sum of £ hereby granted or
secured as aforesaid, such repurchase shall not be, nor be
considered as an extinguishment thereof, but the same or a
like annuity shall, as between the said (*surety*) his executors,
administrators, and assigns, and the said (*grantor*) his
heirs, executors, and administrators, continue, subsist, and
be payable to him the said (*surety*) his executors, admini-
strators, and assigns, during the natural life of the said
(*grantor*) in like manner and with the same powers and
remedies for compelling payment thereof, in all respects as
before such repurchase was made; and he the said (*grantor*)
his heirs, executors, or administrators, shall and will at and
upon the request of him the said (*surety*) assign, transfer,
and make over, or otherwise assure, the said annuity and all
and every the several securities for the same unto him
the said (*surety*) his executors, administrators, or assigns,
and in such manner and form as he or they shall reasonably
require in that behalf."

ANNUITIES.

*Secured on
Freeholds.
(Full Form.)*

ANNUITIES.

*Secured on
Freeholds.
(Short Form.)*

Upon trust to
permit the
grantor to take
the rents, &c.
till default.

Then or by sale,
&c. to pay the
arrears.

and assigns, from the day next before the day of the date of these presents, for the term of 500 years, thence next ensuing (1), without impeachment of waste. But nevertheless upon the trusts, and to and for the intents and purposes hereinafter declared or expressed concerning the same (2), (that is to say) UPON TRUST, to permit the said (*grantor*) his heirs and assigns, to receive and retain the rents and profits of all and singular the same premises, to and for his and their own use, until default shall happen to be made in payment of the said annuity, at or upon some one of the days or times, or in the manner hereinbefore appointed for payment thereof. AND UPON further trust, that in case the said annuity shall happen to be in arrear for the space of sixty days next after any of the days or times herein appointed for payment thereof, (although no demand shall have been made thereof,) then that he the said (*trustee*), his executors, administrators, or assigns, do and shall by or out of the rents and

Tenant for life.

(1) If the grantor be tenant for life only of the estate to be charged with the payment of the annuity, see No. II. p. 34, n. (49.)

Prior incumbrances.

(2) If the premises be charged with a prior annuity, or other incumbrance, see *ante*, No. II. p. 35, n. (59.)

Copyholds.

If any part of the premises be copyhold, there may be added a covenant to surrender them as *ante*, p. 84, rider (B.)

Insurance.

If the premises consist principally of houses or other buildings, the grantor should insure previously to the execution of the deed, and assign the policy; see the form of such an assignment, *ante*, p. 92, rider (D.)

profits of the said hereditaments and premises, or by demising, mortgaging, selling, or otherwise disposing of the same, or any part thereof, or by any other lawful means whatsoever, at his or their discretion, raise, pay and satisfy all arrears of the said annuity, together with all costs, damages, and expenses occasioned by the non-payment thereof(1). AND after full payment and satisfaction of the said annuity and costs, then UPON TRUST, (in case the said annuity shall be paid out of the rents and profits of the said premises), that he the said (*trustee*) his executors, administrators, and assigns, do and shall from time to time permit and suffer the said (*grantor*) his heirs and assigns, to receive and retain, or otherwise well and truly pay unto him and them, all and every the residue and surplus of the same rents and profits, to and for his and their own proper use and benefit. BUT in case the said annuity shall be paid by any sale, mortgage, or other disposition of the said premises, or any part thereof, then UPON TRUST, that he the said (*trustee*) his executors, administrators, or assigns, do and shall forthwith invest the residue or surplus of the money to arise thereby, in the purchase of three per cent. consolidated bank an-

ANNUITIES.

Secured on
Freeholds.
(Short Form.)

Surplus of rents
to grantor.

But in case of
sale surplus to
be invested on
security.

(1) If the premises be subject to any prior annuity, or other incumbrance, see *ante*, No. II. p. 37, n. (54.) See also *ib.* p. 41, n. (56.)

Prior incum-
brances.

ANNUITIES.

*Secured on
Freeholds.
(Short Form.)*

Covenant by
grantor that he
has right to
grant, &c.

AND the said (*grantor*) doth hereby for himself, his heirs, executors, and administrators, covenant and declare, to and with the said (*grantee*) and also with and to the said (*trustee*) and their respective executors, administrators, and assigns, in the manner following, that is to say (1) that he the said (*grantor*) at the time of the sealing and delivery of these presents, hath in himself full power, and lawful and absolute right and title to grant the said annuity of £ and to charge the aforesaid hereditaments and premises with the payment thereof, in the manner aforesaid; and also to grant and demise or otherwise assure the same hereditaments and premises unto the said (*trustee*) his executors, administrators, and assigns, for the

Also that his joining shall not make him liable, as *ante*, p. 46, n. (63).

Insurance
against fire.

If the premises chargeable with the payment of the annuity consist wholly or chiefly of houses or other buildings, it will be proper, unless they have been previously insured, and the policy assigned as hereinbefore mentioned, to insert here a covenant to insure them against fire, for the form of which see *ante*, p. 92, rider (D), p. 97, rider (E), also Vol. V. n. (98).

Exemption
from distress.

An indulgence is sometimes allowed to the grantor by extending the time of distress, &c. with respect to a particular part of the premises charged with the annuity, for the form of which see No. II. p. 47, note.

Trustee.

(1) If the grantor took the estate to himself and a trustee, vary this covenant, as in Vol. II. No. XXXIII. XXXIV.

Wife.

If the wife of the grantor be a party, make this and the following covenants accord with that circumstance, as in Vol. II. No. XXXI. p. 20.

Moiety, &c.

If the grantor be entitled to a moiety or other undivided part only of the premises, see *ante*, Vol. V. No. XI. p. 267.

said term of five hundred years, upon the trusts, and for the intents and purposes hereinbefore expressed concerning the same (1). AND likewise that it shall and will be lawful for the said (*grantee*) his executors, administrators, and assigns, at all times hereafter during the subsistence of the said annuity, to have and receive the same, out of and from all and singular the hereditaments and premises so charged with the payment thereof; and that the same hereditaments and premises shall at all times continue subject to the powers of distress and entry, and other the powers, provisos, trusts, declarations, and agreements by these presents expressed concerning the same, without any manner of hindrance, eviction, disturbance, claim, or demand whatsoever, by any person or persons whomsoever, (other than persons claiming under or by virtue of any such leases, or agreements for leases as aforesaid, so far as respects their several estates and interests under or by virtue of the same.) AND that free and clear, or by the said (*grantor*) his heirs, executors, or administrators, effectually protected and in-

ANNUITIES.

*Secured on
Freeholds.
(Short Form.)*

That the grantee shall quietly enjoy.

That the lands shall continue charged.

Free from other incumbrances.

(1) If part of the premises be copyhold, see *ante*, No. II. Copyholds. p. 53, n. (72).

If the grantor be tenant for life only of the premises charged with the annuity, see *ante*, p. 53, n. (72); and if he be so under a will or marriage settlement, with power for the trustees of such settlement to sell the trust estates, and invest the money in the funds, or in the purchase of other lands with his consent, see *ante*, No. II. p. 53, n. (73). Tenant for life.

If the conveyance be to the trustee to uses, see *post*, No. IV. Uses. p. 157.

ANNUITIES.

*Secured on
Freeholds.
(Short Form.)*

Further as-
surance.

demnified from and against all and singular other estates, rights, titles, interests, charges, and incumbrances whatsoever, except only as aforesaid. AND also, that he the said (*grantor*) and all and every person and persons lawfully claiming or possessing any estate, right, title, or interest, in, to, or concerning the hereditaments and premises hereby charged with the payment of the said annuity, from, under, or in trust for him, [or any of his ancestors,] shall and will at his and their own expense, at all times hereafter during the subsistence of the said annuity, upon the reasonable request of the said (*grantee*) his executors, administrators, or assigns, do and execute all such further or other acts, deeds, matters, and things whatsoever, as well for the better, more effectually or satisfactorily granting and assuring the same unto the said (*grantee*) his executors, administrators, and assigns, during the life of the said (*grantor*) or of the said (*grantee*), or of the survivor of the said (*nominees*), and charging the hereditaments and premises hereinbefore described with the payment thereof, as for demising or assigning the said premises for the then residue of the said term of five hundred years (1), unto the said (*trustee*) his executors, administrators, or assigns, or unto any purchaser, mortgagee, lessee, or other person or persons whomsoever, as the

Copyholds.

(1) If a part of the premises be copyhold, see No. II. p. 57, n. (81).

said (*grantee*) his executors, administrators, or assigns, or his or their counsel in the law, being of the degree of a barrister, shall reasonably require or advise (1). AND moreover (2), that he the said (*grantor*) shall and will at any time or times hereafter, at the request of the said (*grantee*) his executors, administrators, or assigns, (upon reasonable notice being given to him thereof) personally appear at any office or place of assurance within the cities of London or Westminster, and send to such office information in writing of his place of abode, together with satisfactory certificates of his being alive, and of the state of his health, in order that the said (*grantee*) his executors, administrators, or assigns, may insure any sum of money upon the life of him the said (*grantor*). AND that he the said (*grantor*) shall not, nor will do or cause to be done, any act or thing whatsoever, whereby any policy which may be taken out by the said (*grantee*) his executors, administrators, or assigns, for effecting any such insurance shall or may become void or voidable. AND further, that in case the said (*grantor*) shall at any time during the existence of the said an-

ANNUITIES.

Secured on
Freeholds.
(Short Form.)

Covenant by
grantor to ap-
pear at insurance
office.

Grantor will not
prejudice the
policy of assur-
ance.

Will pay extra
premium on
leaving the
kingdom.

(1) If the grantor be tenant for life only of the premises charged with the payment of the annuity, with power of consenting to the sale of the settled estates, see No. II. p. 53, n. (73), p. 58, note. Tenant for life.

(2) If the annuity be granted during the lifetime of the grantee, or the lives of nominees, this covenant is to be omitted. Life of grantee, &c.
If the conveyance be to uses, see *post*, No. IV. p. 159. Uses.

ANNUITIES.

*Secured on
Freeholds.
(Short Form.)*

**FURTHER
WITNESS.**

Judgment to be
a collateral se-
curity only.

Power of re-
purchase.

nuity of £ leave the United Kingdom of Great Britain and Ireland, so as to occasion to the said (*grantee*) his executors, administrators, or assigns, any extra premium or expense for effecting or continuing any such assurance, he the said (*grantor*) his executors or administrators, shall and will repay, or cause to be repaid the same, unto the said (*grantee*) his executors, administrators, or assigns, upon demand made to him or them thereof. AND THIS INDENTURE ALSO WITNESSETH, and it is hereby declared and agreed by and between the said (*grantor*) and (*grantee*) that any judgment which shall be entered up by the said (*grantee*) his executors, administrators, or assigns, upon the hereinbefore in part recited bond, shall be considered as a collateral or further security only for the payment of the said annuity of £ and that no execution shall be sued out thereupon, until the same annuity shall be in arrear for the space of twenty-one days next after the time hereinbefore appointed for payment thereof, but then in such case it shall be lawful for the said (*grantee*) his executors, administrators, and assigns, to sue out such execution, although the said judgment shall have been entered on record for the space of one year or upwards, or the said (*grantor*) shall be then dead, and without causing the said judgment to be revived, or doing any act or thing to keep the same on foot. AND WHEREAS upon the treaty for the purchase of the said annuity, it was agreed that the said (*grantor*) should at any time thereafter

he at liberty to repurchase the same at the [said] sum of £ (1) upon giving six calendar months previous notice in writing thereof to the said (*grantee*). Now THIS INDENTURE FURTHER WITNESSETH, that in pursuance of the said last mentioned agreement, the said (*grantee*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said (*grantor*) his heirs, executors, and administrators, that in case he the said (*grantor*) shall at any time hereafter be desirous of repurchasing (2) the said annuity of £ and shall give unto the said (*grantee*) his executors, administrators, or assigns, six calendar months notice thereof in writing, under his hand, or in lieu of such notice shall pay unto him and them one half year's proportion of the said annuity, (all arrears thereof being previously discharged) he the said (*grantee*) his executors, administrators, and assigns, shall and will accept of the said sum of £ for the repurchase and extinguishment thereof, and also shall and will, at the request and expense of the said (*grantor*) his executors or administrators, do and cause to be done every or any act, deed, matter, or thing which shall be deemed necessary or advisable for the releasing or discharging the

ANNUITIES.

Secured on
Freeholds.
(Short Form.)

FURTHER
WITNESS.
Liberty to re-
purchase.

(1) If the repurchase be permitted or required to be made by a transfer of stock, see *ante*, No. II. p. 66, n. (92). Transfer of stock.

(2) If it be agreed that the grantor shall have the privilege of repurchasing the annuity by instalments, see No. II. p. 66, n. (95). Repurchase by instalments.

ANNUITIES. said annuity, and all securities for the same, as by

*Secured on
Freeholds.
(Short Form.)*

the said (*grantor*) his heirs, executors, or administrators, or his or their counsel in the law, being of the degree of a barrister, shall be reasonably required (1). IN WITNESS, &c.

Title deeds. (1) If the title deeds relating to the premises be not delivered over to the grantee, add covenant for the production of them, as *ante*, p. 116.

Provisos, &c. *.* See various provisos, &c. to be added where circumstances may render it expedient, *ante*, p. 87, *et seq.*

ANNUITIES.

*By Tenant in
Tail.*

No. IV.

Grant of an Annuity by Tenant in Tail during the Life of the Grantee, or of Nominees by Conveyance to Uses.

Variations where the Grantor is Tenant in Fee-simple. Where the Annuity is granted during the Life of the Grantor.

Where it is granted for a Term of Years determinable with a Life or Lives (1).

Other Variations as in Margin below (2).

THIS INDENTURE, of parts, made the
day of , in the year of the

(1) As it has been doubted whether a rent charge, *pur autre vie*, (being an estate of freehold) can be made to devolve upon the executors or administrators of the grantee, even since the statutes of 29 Car. II. c. 3, and 14 Geo. II. c. 20, where an annuity is intended to be payable during the life of the grantee or lives of nominees, it is frequently granted for a definite term of years, if he or the nominees shall so long live, but the question is considered to be very problematical, and has not effected a discontinuance of the usual practice of making the grant immediately to the grantee and his personal representatives; and see Fearn Cont. Rem. 452; 2 Blac. Com. 260; 2 Saund. Us. 248; Rawlinson v. D. Montague, 3 P. Wms. 264.

Years determinable with lives.

(2) See also notes and variations, Vol. I. No. XXII. p. 297, *et seq.* and Vol. V. No. VII. p. 164, *et seq.*

ANNUITIES. reign, &c. and in the year of our Lord .
 BETWEEN (*the grantor*) of, &c. of the first
 By Tenant in part, (*the grantee*) of, &c. of the second
 Tail. part, and (*the trustee*) (a trustee named and ap-
 pointed by and on behalf of the said (*grantee*)
 for the purposes hereinafter expressed), of the
 Recital of crea- third part (1). WHEREAS (2) by indentures of
 tion of the estate lease and release, bearing date respectively the
 tail. and days of , which was
 in the year , and made, or expressed to be
 made, between, &c. purporting to be a settlement
 made previous to a marriage which was after-
 wards had between, &c. all and singular the several
 messuages, lands, and hereditaments hereinafter
 described were conveyed, settled, and assured
 unto and to the use of the said (*trustee*) his heirs
 and assigns, In trust (after the said marriage) for
 the said and his wife, for their
 lives and the life of the survivor of them, with re-
 mainder to and for the first and other sons of the
 said his intended wife in tail male, and
 in default of such heirs male, then to the heirs

Reversion.

(1) If the grantor is not seised of the reversion expectant upon the determination of the estate tail, which in this case he is supposed to be, make tenant to præcipe a party of the second part, and see *ante*, Vol. I. No. XXII. or Vol. V. No. VII.

Wife.

If the wife of the grantor be entitled to dower or otherwise interested in the premises, make her also a party.

Fee-simple.

(2) If the grantor be tenant in fee-simple, this recital will of course be omitted, and see *ante*, No. II.

female in like manner, with remainder to the heirs and assigns of the survivor of them, the said and his wife in fee-simple (*or as the case may be*). AND WHEREAS the said , the wife of the said , afterwards departed this life, leaving the said her surviving, and also the said (*grantor*) her only son by the said marriage, and also the said her only daughter by the said marriage. AND WHEREAS the said has also departed this life, and the said (*grantor*) and have attained their respective ages of twenty-one years and upwards, and the said (*grantor*) on the decease of the said became seised of the several lands and hereditaments comprised in the said settlement, and hereinafter described, as of an estate in fee-tail, with remainder to his own right heirs in fee-simple, under or by virtue of the uses and trusts of the same settlement (1). AND WHEREAS the said (*grantor*) has contracted (2) with the said (*grantee*) for the sale to him of an annuity or yearly rent charge of £ during the lives of the said (*nominees*) of, &c. and the lives and life of the survivors and survivor of them [or for the term of years, if (*nominees*) of, &c. or any or either of them shall so long live, or of the said (*grantor*) or (*grantee*) as *the case may be*] for the price or sum of £ ,

ANNUITIES.

By Tenant in Tail.

Contract for purchase of annuity.

(1) If the estate tail was created by will, recite as *ante*, Will. Vol. V. p. 228.

(2) If the annuity be granted in pursuance of a prior agreement in writing between the parties, see *ante*, p. 13, n. (†). Prior agreement.

ANNUITIES.

*By Tenant in
Tail.*

Bond and war-
rant of attorney
given.

WITNESS that
grantor in con-
sideration, &c.

the said annuity to be charged upon the aforesaid lands and hereditaments, in the manner hereinafter expressed. And for better securing the payment of the said annuity the said (*grantor*) has by his bond (1) or obligation bearing even date herewith, become bounden unto the said (*grantee*) in the penal sum of £ , with a condition thereunder written for making void the said obligation on payment of the said annuity, yearly rent charge, or annual sum of £ on the days and in the manner therein and hereinafter particularly mentioned, and hath also executed a warrant of attorney, bearing even date with the said bond, empowering certain attornies therein named, to confess a judgment against him in his Majesty's Court of Common Pleas at Westminster in the said sum of £ with costs of suit, and as a further security for the due payment of the said annuity, the said (*grantor*) has agreed to execute such grant, release, and assurance of the said hereditaments as hereinafter is contained. NOW THIS INDENTURE WITNESSETH that in consideration (2) of the sum of £ of lawful and current money of that part of the United Kingdom of Great Britain and Ireland called England, at or

Warrant of
attorney.

Consideration.

(1) If a warrant of attorney only be given, see *ante*, No. II. p. 15, n. (9), also p. 16, n. (13).

(2) If the consideration be other than money paid down to the grantor at the time of the execution of the deed, see *ante*, No. II. p. 75, rider (A).

immediately before the sealing and delivery of these presents, well and truly paid to the said (*grantor*) by the said (*grantee*) in full for the absolute purchase of the said annuity, yearly rent charge, or annual sum of £ so contracted for as aforesaid, the receipt of which said sum of £ the said (*grantor*) doth hereby acknowledge, and of and from the same and every part thereof doth hereby and by the receipt for the said sum hereupon indorsed, acquit, release, and for ever discharge the said (*grantee*) his executors, administrators, and assigns, HE the said (*grantor*) HATH given, granted, bargained, and sold, and by these presents DOTH give, grant, bargain, sell, and confirm unto the said (*grantee*) his executors, administrators, and assigns, one annuity, or clear annual sum of £ of such lawful and current money as hereinbefore is mentioned, to be issuing and payable, had, received, perceived, and taken out of and charged and chargeable upon all and singular the messuages or tenements, lands and hereditaments hereinafter particularly described, and intended to be hereby granted and released, To HAVE, HOLD, receive, perceive, take, and enjoy the said annuity, yearly rent charge, or annual sum of £ hereby granted, or mentioned or intended so to be, unto and by him the said (*grantee*) his executors, administrators, and assigns, from henceforth for and during the joint natural lives of the said (*nominees*) and the lives and life of the survivors and survivor or longest

ANNUITIES.

By Tenant in Tail.

Grants annuity.

To HOLD to grantee during the lives of nominees.

ANNUITIES.

*By Tenant in
Tail.*

FURTHER
WITNESS,
grantor cove-
nants to levy
fine to bar intail.

liver of them, [or for the term of years, if the said (*nominees*) or any or either of them shall so long live (1)], [or the natural life of him the said (*grantor*) or (*grantee*)], the said payments to be made respectively at or in the common dining hall of Lincoln's Inn, in the county of Middlesex, on the day of in every year, between the hours of eleven and one of the clock in the day-time, and also a due and proportionable part of the said annuity, to be computed from the commencement of any quarter in which the survivor of them the said (*nominees*) or the said (*grantor*) or (*grantee*) may happen to die up to the day of his or her decease; all and every of which said payments are to be made without any deduction or abatement whatsoever, [save only such abatement or deduction as the said (*grantor*) shall be required or authorised to make thereout for the use of government by reason of any tax upon property or income.] AND THIS INDENTURE FURTHER WITNESSETH (2), that for barring, destroying, and extinguishing all estates tail,

Term of years.

(1) As to the annuity being granted for a term of years, see *ante*, p. 137, n. (1).

Grantor tenant
in fee-simple.

(2) If the grantor be tenant in fee-simple, instead of this witnessing part in the text, say,

“AND THIS INDENTURE FURTHER WITNESSETH that (1) in further pursuance and performance of the said agreement on the part of the said (*grantor*), [and also in consideration of the sum of five shillings, of like lawful and current money aforesaid, to the said (*grantor*), at the same time paid by the

and all reversions and remainders thereupon, expectant or depending of and in the messuages, lands, and hereditaments hereinafter mentioned, and for settling and assuring the same to and for the uses and upon and for the trusts, intents, and purposes hereinafter expressed, he the said (*grantor*) for himself and his heirs, executors, and administrator, doth hereby covenant, promise, and agree with and to the said (*grantee*) and his heirs, that he the said (*grantor*) and his heirs (1) shall

ANNUITIES.

By Tenant in
Tail.

said (*trustee*), the receipt whereof is hereby acknowledged,] HE the said (*grantor*) at the request and by the nomination of the said (*grantee*) (testified by his signing and sealing these presents), HATH granted, bargained, sold, and released, and by these presents DOTH grant, bargain, sell, and release unto the said (*trustee*) and his heirs, ALL, &c. and all houses, &c. and the reversion, &c. (in his actual possession, &c.) and all the estate, &c. and all deeds, &c. as *post*, p. 146. TO HAVE and to hold the several messuages, lands, and hereditaments hereinbefore described, and other the premises by these presents granted and released, or otherwise assured, or intended so to be, unto him the said (*trustee*) his heirs and assigns for ever; but nevertheless to the uses, for the ends and purposes, upon the trusts, and under and subject to the provisos, restrictions, declarations, and agreements hereinafter limited or expressed, or mentioned or intended to be limited or expressed concerning the same, that is to say, 'To THE USE,' &c. as *post*, p. 147, marg. *.

Or the form may be varied, as *post*, rider (A), p. 164.

(1) If the wife of the grantor be entitled to dower out of the Wife. lands charged with the annuity, say,

“ He the said (*grantor*) and his wife.”

And see *ante*, No. II. p. 64.

ANNUITIES.

By Tenant in
Tail.

and will at the proper costs and charges of the said (*grantor*), as of Trinity term now last past, or Michaelmas term now next ensuing, in due form of law, acknowledge and levy before the justices of his Majesty's Court of Common Pleas at Westminster, unto the said (*grantee*) and his heirs, one or more fine (1) or fines, sur conuzance

Recovery.

(1) If it be necessary or thought advisable that a recovery should be suffered to bar the estate tail of the grantor, (and see *ante*, Vol. I. No. XXII. notes), instead of this covenant to levy a fine, convey the premises to a tenant to a præcipe for suffering such recovery, as,

Conveyance to
tenant to præ-
cipe.

“AND THIS INDENTURE FURTHER WITNESSETH, that for docking, barring, and destroying all estates tail of and in the same messuages, lands, tenements, and hereditaments, and all remainders and reversions expectant or depending thereupon, and all conditions and collateral limitations (if any) annexed to or affecting the same [and in consideration of the sum of ten shillings of such lawful and current money aforesaid, to the said (*grantor*) in hand at the same time paid by the said (*tenant to the præcipe*) the receipt whereof is hereby acknowledged,] HE the said (*grantor*) HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant, bargain, sell, alien, and release unto the said (*tenant to the præcipe*) and his heirs, ALL, &c. &c. TO HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and all and singular other the premises hereby granted and released, or otherwise assured, or intended so to be, [with their and every of their appurtenances] unto and by him the said (*tenant to the præcipe*) and his heirs, to and for the use and behoof of him the said (*tenant to the præcipe*) his heirs and assigns for ever. To the intent that he the said (*tenant to the præcipe*) may become and be a perfect tenant to the freehold of all

de droit, &c. with proclamations, to be there-
upon had according to the form of the statute in
that case made and provided, and the common
course of fines in such case accustomed, of ALL,

ANNUITIES.

By Tenant in
Tail.

Parcels.

and singular the same, in order that one or more common recovery or common recoveries, with double or more voucher or vouchers, may forthwith at the expense of the said (*grantor*) be had and suffered of the same premises, by proper and sufficient names and descriptions upon a writ or writs of entry, *sur disseisin in le post*, in which the said (*grantee*) shall demand against the said (*tenant to the præcipe*) who shall vouch to warranty the said (*grantor*) who shall vouch the common vouchee, in such manner as is usual in like cases, so that judgment may be given to the said (*grantee*) to recover the said messuages, lands, tenements, and hereditaments hereby conveyed, or intended so to be, against the said (*tenant to the præcipe*) and for him to recover in value against the said (*grantor*) and for the said (*grantor*) to recover in value against the common vouchee, and that execution may be awarded and seisin had upon such recovery or recoveries according to the usual course in like cases. AND it is hereby directed, declared, and agreed by and between the parties to these presents, as far as they respectively are interested, that after the recovery or recoveries hereby agreed to be suffered shall be suffered and perfected, the same and all other recoveries suffered and to be suffered of the same messuages, lands, tenements, and hereditaments, or any of them, either alone or together with other lands or hereditaments, shall as to and concerning the messuages, lands, tenements, and hereditaments hereinbefore released, or otherwise conveyed or intended so to be, with the appurtenances, be and enure to the use," &c. *as in the text, post*, p. 147, marg. *.

Uses of recovery.

See also *ante*, Vol. I. No. XXII. p. 302; Vol. V. No. VII. p. 167, whence a fuller form may be adopted if thought fit.

ANNUITIES.

*By Tenant in
Tail.*

Declaration of
uses of fine.

&c. and of all houses, outhouses, buildings, stables, barns, yards, gardens, orchards, ways, paths, passages, lights, easements, waters, watercourses, hedges, ditches, fences, profits, commons, rights, privileges, advantages, hereditaments, and appurtenants whatsoever to the said messuages, lands, hereditaments, and premises, and every or any of them belonging, or in any wise appertaining, or with them or any of them held, used, and enjoyed, or accepted, reputed, taken, or known as part, parcel, or member of them or of any of them, or of any part or parcel thereof, and of the reversion and reversions, remainder and remainders of the same premises and every part thereof, by such apt and convenient names, quantities, number of messuages and acres, qualities, and other descriptions, as will effectually ascertain and comprise the same. AND it is hereby declared and agreed by and between the parties to these presents, that as well the said fine or fines so as aforesaid, or in any other manner or at any other time to be had and levied of the same premises, as also all and every other fine and fines, and all other conveyances and assurances in the law whatsoever, already had, made, levied, suffered, or executed, or hereafter to be had, made, levied, suffered, or executed of the same premises, or any part thereof, alone or jointly with any other hereditaments, by and between the said parties to these presents, or any of them, alone or jointly with any other person or persons, or whereunto they or any of them are,

is, or shall be parties or privies, or party or privy, shall from and after the perfecting thereof be and enure, and be deemed, construed, adjudged, and taken to be and enure, and is and are hereby declared to have been at the time of the making, levying, suffering, and executing thereof meant and intended to be and enure, and the conusee or conusees in such fine or fines, or any of them named or to be named, and his and their heirs, shall stand and be seised of the said hereditaments and premises with their and every of their appurtenants. To THE USE (1), intent, and purpose that the said (*grantee*) his executors, administrators, and assigns, shall and may have, receive, and take yearly and every year, out of and from the same, and out of and from or by the rents, issues, and profits thereof, the said annuity or yearly rent charge of £ for and during the term of the natural lives of them the said (*nominees*) and the lives and life of the survivors and survivor of them, [or the life of the said (*grantor*) or for and during the term of years, if they the said (*nominees*) or any or either of them shall so long live] at and upon the days and times and in the manner here-
inbefore mentioned for payment thereof. [AND

ANNUITIES.

By Tenant in Tail.

For grantee to receive and retain rents, &c.

+

Further use that if annuity in arrear 21 days to distrain.

(1) In order to bring the annuity within the statute of 27 Hen. VIII. c. 10, s. 4 and 5, and vest the possession in him with authority to distrain without the reservation of an express power for that purpose, it is usual to create a rent charge by way of use, and see *Jemott v. Cowley*, 1 Lev. 170. *Havergill v. Hare*, Cro. Jac. 510; but this is unnecessary, as such a power is given by 4 Geo. II. c. 28, s. 5. 3 Cra. Dig. 332, and *post*, next page, n. (1).

Distress under use.

ANNUITIES. to and for this further use (1), intent, and purpose,
that in case the said annuity or yearly rent charge

*By Tenant in
Tail.*

Effect of 27
Hen VIII.
c. 10.

(1) By stat. 27 Hen. VIII. c. 10, s. 5, it is enacted, that "persons having an use and interest to have and receive any annual rent out of any lands, tenements, or hereditaments, and their heirs and assigns shall be adjudged and deemed to be in possession and seisin of the same rent of and in such estate as they had in the title, interest, or use of the said rent, and as if a sufficient grant or other lawful conveyance had been executed to them by such as were seised to the use or interest of any such rent; and shall lawfully distrain for non-payment of such rent, and have all other suits, entries, and remedies for the said rents as if the same had been really granted to them, with sufficient clauses of distress, re-entry," &c. The operation of this statute in respect of the rent is thus explained by Mr. Butler in his usual perspicuous manner: "As soon as the rent is in arrear, an use which is served out of the original seisin of the feoffee, releasee, conusee, or recoverer springs up and vests in the person to whom the power is given. This use is immediately transferred into possession by the statute; he has consequently a right to take and keep that possession till the purpose for which it is executed is satisfied, and then the use determines. By virtue of this estate he may make a lease for years to try his title in ejectment (which he could not, without possessing the legal interest) either to obtain possession of the land, if it be withheld from him, or to restore it, if it be disturbed or divested; and if he assigns the annual sum, this right of entry and perception of the rents and profits of the lands charged with the payment of it, passes to the assignee. But a distinction must be made between this case and that of a grant of a rent to be issuing out of certain lands, with a proviso, declaration, or covenant, that if the rent be in arrear the grantee may enter, &c. Here there is no seisin in any person out of which an use can arise to the grantee on non-payment of the rent; and therefore possession is not in him till he makes an actual entry, but an interest vests in him when the rent becomes in arrear, and he may then reduce it into possession by ejectment." See Co. Lit. 203, a, n. (3), and authorities there cited; and see *ante*, No. II. p. 26, n. (34).

of £ , or any part thereof, shall at any time happen to be in arrear and unpaid by the space of twenty-one days next over or after any of the said days or times whereon the same is hereinbefore appointed to be paid, then and from thenceforth, and from time to time, as often as the same shall happen, it shall be lawful for the said (*grantee*) or his assigns, or his or their lawful attorney or attornies, to enter into and upon all or any part of the said hereditaments and premises, and there to distrain for the same, and deal and act in and with such distress according to law, in like manner as in case of distress for rent reserved on leases for years, to the intent that the said (*grantee*) his executors, administrators, and assigns shall and may be fully paid and satisfied the same annuity or yearly rent charge of £ , and every part thereof, and all arrears of the same, and all costs, damages, and expenses attending the recovery thereof.] AND to this further use, intent, and purpose, that if the said annuity or yearly rent charge of £ , or any part thereof, shall be in arrear and unpaid by the space of forty days next after any of the days or times hereby appointed for payment thereof, then and in such case, and as often as the same shall happen, (although no previous demand shall have been made thereof) it shall be lawful for the said (*grantee*) his executors, administrators, and assigns into and upon the said hereditaments and premises, or any of them, or any part thereof in the name of the whole, to enter, and the same to have, hold, retain, and en-

ANNUITIES.

By Tenant in Tail.

Further use if
in arrear for 40
days to enter.

ANNUITIES.

*By Tenant in
Tail.*

And subject to
said annuity to
use of trustee
for 100 years.

Upon trust for
grantor till
default.

joy, and the rents, issues, and profits thereof to receive and take to and for his and their own use and benefit, until he and they shall be thereby or otherwise fully paid and satisfied so much of the said annuity or yearly rent charge as shall be then in arrear, and also such further part thereof as shall become due during his or their possession of the said premises, together with all losses, costs, damages, and expenses whatsoever, which shall have been occasioned by reason or means of the said annuity or yearly rent charge having been so in arrear, (every of which possession shall be without impeachment of waste (1)). AND subject to the said annuity or yearly rent charge of £ , and to the powers and remedies hereby given for securing and enforcing the payment thereof, to the use of the said (*trustee*) his executors, administrators, and assigns, for the term and period of one hundred years (2), to commence and be computed from the date of these presents (determinable nevertheless as hereinafter mentioned), but upon the trusts, and to and for the ends, intents, and purposes hereinafter declared or expressed concerning the same, that is to say, UPON TRUST to permit and allow the said (*grantor*) his heirs and assigns to receive and retain the yearly and other

Prior annuity
or mortgage.

Outstanding
term.

(1) If the premises be subject to a mortgage or prior annuity, see *ante*, p. 27, n. (35), p. 35, n. (50).

(2) If there be an outstanding term so situated as to be available for securing the annuity, see *ante*, No. II. p. 28, n. (37), and p. 104, (G).

rents, issues, and profits of the said hereditaments and premises, to and for his and their own proper use and benefit, until some default shall happen to be made in payment of the said annuity or yearly rent charge of £ on the days or in the manner hereinbefore appointed for payment thereof, AND from and immediately or at any time after any such default shall be made, Then upon TRUST (1) from time to time, and as often as the same shall happen, that he the said (*trustee*) his executors, administrators, or assigns shall or may receive and take out of the rents, issues, and profits thereof the same annuity or yearly rent charge, or such part thereof as shall be then in arrear, and in case the rents and profits of the said premises shall at any such time or times be insufficient to pay and discharge such arrears, or in case the said premises shall be untenanted for the space of twenty-one days next after any part of the said annuity or yearly rent charge shall be in arrear, then and in either of the said cases that he the said (*trustee*) his executors, administrators, or assigns, shall or may by mortgage, sale, or other disposition of the said hereditaments and premises, or any part thereof, in such manner and for such sum or other consideration as he or they shall think proper, for the then residue of the said term of years, or by any other lawful means whatsoever, at his or their discretion and pleasure, raise and

ANNUITIES.

By Tenant in Tail.

But in case of default to pay arrears out of rents.

Or by mortgage or sale to pay arrears and costs.

(1) If the premises be subject to a mortgage or a prior annuity, see *ante*, No. II. p. 37, n. (54).

Mortgage or prior annuity.

ANNUITIES. pay so much of the said annuity or yearly rent charge of £ as shall be then in arrear, and all expenses occasioned by any such mortgage, sale, disposition, or other means aforesaid, and after full payment of the same, and of monies expended for repairs and insurance, (if any), Upon TRUST (1) to pay the surplus of the said monies (if any) unto the said (*grantor*) his heirs, executors, administrators, or assigns, or at the free will, pleasure, and discretion, and by the direction of the said (*grantee*) his executors, administrators, or assigns, invest the same in the purchase of government or other securities under and subject to such trusts as the said (*grantee*) his executors, administrators, or assigns, or his or their counsel shall require for securing the payment of any future arrears of the said annuity or yearly rent charge, or in the purchase of any like or equal annuity, yearly rent charge, or annual sum, of or from any person or persons, body corporate, company, or others whomsoever, for the use and benefit of the said (*grantee*) his executors, administrators, or assigns. AND it is hereby expressly declared by the said (*grantor*) for himself, his heirs, and assigns, that all contracts, conveyances, and assurances entered into or made by the said (*trustee*) his executors, administrators, or assigns, in pursuance of the trusts aforesaid, of or con-

By Tenant in Tail.

And surplus to grantor, or at request of grantee invest it on securities.

Sales by trustee to be valid.

Prior annuity or mortgage.

(1) If there be a prior annuity or a mortgage affecting the premises, see *ante*, No. II. p. 41, n. (56).

cerning the said hereditaments and premises, or **ANNUITIES.**
 any part thereof, shall be good and effectual to
 all intents and purposes whatsoever, although the
 said (*grantor*) his heirs or assigns, shall not join
 or otherwise concur in the same, and that the re-
 ceipt of the said (*trustee*) his executors, admini-
 strators, or assigns shall from time to time be a
 good and sufficient discharge to the person or
 persons to or with whom any such contract, con-
 veyance, or assurance shall at any time, and from
 time to time be made for the consideration or
 other money therein expressed to be received,
 and such person or persons, his or their exe-
 cutors or administrators, shall not afterwards be
 accountable for the same, or the application there-
 of, nor be obliged to inquire into the reason or
 expediency of making any such mortgage, sale, or
 other disposition of the said premises, or whether
 the said annuity or yearly rent charge, or any
 part thereof, then be, or theretofore have been in
 arrear or not. AND subject to the said annuity,
 yearly rent charge, or annual sum of £
 and the powers and remedies hereby given for the
 payment thereof; and to the said term of
 years, then to the use and behoof of the said
 (*grantor*) his heirs and assigns for ever (1). AND (2)
 the said (*grantor*) for himself; his heirs, executors,

By Tenant in
Tail.

Subject to said
annuity, &c.
, trustee to hold
in trust for
grantor.

Covenant to pay
annuity.

(1) If an insurance is to be effected against fire, see *ante*, Insurance.
 No. II. p. 46, n. (63).

If any dwelling house or other part of the premises are to
 have an exemption from distress, see *ante*, No. II. p. 46, n. (63). **Distress.**

(2) Add proviso for cessation of the term, as *ante*, p. 129. **Cessation of term.**

ANNUITIES.

*By Tenant in
Tail.*

Grantor to re-
pair premises.

And to insure.

and administrators, doth hereby covenant (1), promise, and agree with and to the said (*grantee*), his executors, administrators, and assigns, that he the said (*grantor*) his heirs, executors, or administrators, shall and will from time to time during the natural lives of the said (*nominees*) and the lives and life of the survivors and survivor of them, [or the life of him the said (*grantor*) or (*grantee*), or during the said term of years, if the said (*nominees*) or any or either of them shall so long live] well and truly pay or cause to be paid unto the said (*grantee*) his executors, administrators, and assigns the said annuity or yearly rent charge of £ of such lawful and current money as aforesaid, upon the days and in the manner hereinbefore appointed for payment thereof. AND also that he the said (*grantor*) his heirs or assigns, shall and will at all times during the continuance of the said term of years, or during such part or period thereof as the said annuity or yearly rent charge of £ shall be subsisting and payable, maintain and keep all and singular the several messuages, buildings, and other insurable premises hereby made chargeable with the payment thereof, in tenantable and substantial repair in all things (2). AND that he the said (*grantor*) his heirs or assigns shall and will within days next after the date hereof, at his or

Lands only
chargeable.

Insurance and
repairs.

(1) If the person of grantor is not to be liable for the annuity, see *ante*, No. II. p. 94, n. (30), p. 48, n. (62).

(2) See also covenants, &c. for repairing and insuring, *ante*, No. II. p. 35, n. (52), also pp. 92, 97; and Vol. V. p. 98.

their own expense, insure or cause to be insured the same in the insurance office, or in one other of the public offices in the city of London or Westminster for insurance against loss by fire, to be approved of by the said (*grantee*) his executors, administrators, or assigns, in the sum of £ , and keep the same so insured during the time or period last aforesaid, and at the request of the said (*grantee*) his executors, administrators, or assigns, will produce the policy for such insurance, and the receipts for the premium to be from time to time paid for the same, and in case the said (*grantor*) his heirs or assigns shall refuse or neglect to keep up such insurance, or to produce such policies or receipts as aforesaid, the said (*grantee*) or his executors, administrators, or assigns shall be at liberty to insure the said premises in the said sum of £ , and to charge the said (*grantor*) his heirs and assigns, with all sums paid for effecting such insurance, together with interest after the rate of £5 per cent. per annum, such sums with interest to be paid at the then next day for payment of the said annuity or yearly rent charge of £ , and in default thereof to be chargeable and a charge upon the hereditaments and premises chargeable with the said annuity or yearly rent charge, and be raised and paid in the same manner as the said annuity or yearly rent charge may be raised by virtue of these presents; and in case the said premises or any part thereof shall at any time be destroyed or damaged by fire during the said term,

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By Tenant in Tail.

ANNUITIES.

*By Tenant in
Tail.*

Covenant of
seisin by
grantor.

all sums of money which shall be paid by the said insurance office by virtue or in consequence of any such insurance, shall with all convenient speed be laid out in substantially rebuilding or repairing the same (as the case may require), under the superintendence or inspection of the said (*grantee*) his executors, administrators, or assigns, or his or their surveyor, or at the discretion and pleasure of the said (*grantee*) his executors, administrators, and assigns, be laid out or invested in such or the like manner as if the said monies had arisen from the sale or other disposition of the said premises by virtue of the trusts aforesaid (1). AND the said (*grantor*) for himself, his heirs and assigns, doth hereby further covenant, promise, and agree with and to the said (*grantee*) his executors, administrators, and assigns, in the manner following, that is to say, that he the said (*grantor*) at the time of the sealing and delivering of these presents, is lawfully seised of an absolute and indefeasible estate of inheritance in fee-tail, to and to the use of him and his heirs, of and in the several messuages, lands, and hereditaments hereinbefore described and demised, or otherwise as-

Full form.

(1) Fuller forms of the covenants for the title, if required, may be found, *ante*, No. II. p. 48.

Wife.

If the wife of grantor be entitled to dower, see *ante*, p. 50, n. (65), p. 51, n. (69).

Prior annuity,
&c.

If the premises are chargeable with a prior annuity or other incumbrance, see *ante*, No. II. p. 51, n. (70).

Trustee.

If the trustee of the grantor be a party, see *ante*, p. 46, n. (68).

sured or intended so to be(1). AND hath in himself lawful and absolute authority to grant the said annuity or yearly rent charge of £ . . . , and to charge and make liable all and every the said hereditaments and premises with the payment thereof in the manner aforesaid, and according to the true intent and meaning of these presents (2). AND that from and after, and as often as any default shall be made in payment of the said annuity or yearly rent charge of £ . . . contrary to the true intent and meaning hereof, it shall be lawful for the said (*grantee*) and his executors, administrators, or assigns, and for the said (*trustee*) his executors, administrators, or assigns, from time to time and at all times during the subsistence of the same annuity or yearly rent charge to enter into and upon, and peaceably hold and enjoy the said hereditaments and premises hereby chargeable with the payment of the same, and receive and take the rents, issues, and profits thereof, to the uses, upon the trusts, and for the ends and purposes hereinbefore declared or expressed concerning the same, and according to the purport and true intent and meaning of the powers, pro-

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By Tenant in Tail.

Right to grant annuity.

Trustees to enter, &c. after default.

(1) If the premises be untenanted, or the annual value of them is not satisfactorily shown to the grantee, see *ante*, No. II. Value of premises.
p. 52, n. (†).

(2) If there be a power in the recited settlement, &c. for sale or exchange of the premises by the trustees, see *ante*, No. II. Premises not to be exchanged.
p. 53, n. (72), p. 58, note.

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Tail.*

Farther as-
surance.

visos, trusts, declarations, and agreements herein-
before contained or expressed in that behalf, and
that free and clear, and freely and clearly ac-
quitted, exonerated, and discharged, or effectually
protected and indemnified by the said (*grantor*)
his heirs, executors, administrators, or assigns,
of, from, and against all former and other gifts,
grants, mortgages, annuities, demises, rents,
estates, rights, titles, charges, and incumbrances
whatsoever. AND moreover that he the said
(*grantor*) his heirs, executors, and administrators,
and all persons claiming or possessing any estate,
right, title, or interest, in or to the hereditaments
and premises hereby chargeable with the said an-
nuity or yearly rent charge of £ as afore-
said, or intended so to be, or any part thereof,
under or in trust for him or them, shall and will
from time to time, and at all or any times or time
hereafter, at the reasonable request of the said
(*grantee*) or his executors, administrators, or as-
signs, but at the expense of the said (*grantor*)
his heirs, executors, administrators, or assigns,
make, do, and execute all and every such further
and other lawful and reasonable grants, assign-
ments, conveyances, assurances, matters, and
things whatsoever, whether by fine, recovery, or
otherwise, for the further, better, or more satis-
factorily granting, confirming, and securing unto
the said (*grantee*) his executors, administrators,
and assigns, the same annuity or yearly rent charge,
and for making the lands and hereditaments ex-
pressed or intended to be hereby demised or

otherwise assured, chargeable with the payment thereof, and for demising or otherwise assuring the same lands and hereditaments, with their appurtenances, or any part thereof, unto the said (*trustee*) his executors, administrators, or assigns, for all the residue which shall be then to come of the said term of years, upon the trusts and for the intents and purposes aforesaid, or any or either of them, and also for conveying and assuring all or any of the said lands and hereditaments to any mortgagee, purchaser, or other grantee or assignee thereof, as he the said (*grantee*) his executors, administrators, or assigns, or his or their counsel in the law shall reasonably require in that behalf(1). PROVIDED ALWAYS, and the said (*grantor*) and (*grantee*) do hereby respectively agree and declare, that the said (*trustee*) his executors or administrators, shall and may retain and reimburse himself and themselves by any of the means aforesaid, all reasonable costs, loss of time, and expenses (to be liberally estimated as between attorney and client) which he or they may have sustained, or had in the execution of the powers and trusts hereby in him or them reposed, and that he or they shall not be chargeable with or for any loss or damage which may happen to the said trust premises, or any monies which may come to his or their hands by virtue of these presents, unless the same shall

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Indemnity to trustees.

(1) If the premises be subject to any prior incumbrance, see *Prior annuity, &c.*
ante, pp. 57, 107.

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**FURTHER
WITNESS,**
warrant of at-
torney a col-
lateral security
only, &c.

**FURTHER
WITNESS,**
power of re-
purchase.

happen by his or their wilful or voluntary default or negligence (1). AND THIS INDENTURE FURTHER WITNESSETH, and it is hereby declared and agreed by and between the parties hereto, that when any judgment upon the said hereinbefore in part recited bond shall be entered up in pursuance of the said in part recited warrant of attorney, the same shall be as a collateral security only for better securing the payment of the said annuity, yearly rent charge, or annual sum of £ and no execution shall be taken out thereupon until some payment of the same annuity or yearly rent charge shall be in arrear for the space of twenty-one days next after the same ought to be paid; but in case the same shall be so in arrear, it shall not be necessary for the said (*grantee*) his executors, administrators, or assigns, to revive the said judgment on account of the same having been entered on record for the space of one year or upwards, or of the decease of the said (*grantor*) but the same shall be in force in like manner as if the same had been regularly kept on foot, notwithstanding any rule, practice, or usage of the court in which the said judgment shall be entered to the contrary. AND THIS INDENTURE FURTHER WITNESSETH (2), and it is hereby further agreed

Assurance of
life.

(1) If the annuity be granted during the life of the grantor, add covenants as to an assurance on his life by the grantee; see *ante*, No. II. p. 59.

Property tax.

(2) If for the time being there be a property or income tax upon the annuity, see *ante*, No. II. pp. 64, 87.

and declared, and the said (*grantee*) for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, grant, and agree with and to the said (*grantor*) his heirs, executors, and administrators, that in case he the said (*grantor*) his heirs, executors, or administrators, shall at any time after the expiration of four years from the date of these presents be desirous of repurchasing the said annuity or yearly rent charge of £ (1), and shall give six calendar months' notice thereof in writing unto the said (*grantee*) or his executors, administrators, or assigns, (such notice to expire upon some or one of the quarterly days hereby appointed for the payment of the same, he the said (*grantee*) and his executors, administrators, or assigns, shall and will, on receiving all arrears of the said annuity, and all costs and expenses which may have been incurred on account thereof, accept the sum of £ (2) in full for the repurchase thereof, and shall and will at the expense of the said (*grantor*) his heirs or assigns, assign, release, surrender, and vacate, or otherwise dispose of the same, and all securities hereby or otherwise given for the payment thereof, and also the hereditaments and premises hereinbefore charged with

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By Tenant in Tail.

(1) If it be agreed that the grantor shall be at liberty to repurchase the annuity at different periods, see *ante*, No. II. p. 66, n. (95). Repurchase by instalments.

(2) If the repurchase is to be made by a transfer of stock to the grantee, see *ante*, No. II. p. 68, n. (96). Transfer of stock.

ANNUITIES.

*By Tenant in
Tail.*

Cessation of
annuity on
death, &c.

the payment thereof, unto such person or persons as the said (*grantor*) his heirs or assigns, shall in that behalf direct, and otherwise act in and concerning the said annuity, securities, and premises as he or they shall reasonably require. [PROVIDED always, and it is hereby declared and agreed by and between the parties to these presents, that from and after the decease of the said (*grantor*) or (*grantee*) or of the survivor of them the said (*nominees*) and payment of all arrears of the said annuity or yearly rent charge of £ and such proportionable part thereof as aforesaid, and all costs, charges, and expenses attending the execution of the aforesaid trusts, (no repurchase of the said annuity or yearly rent charge having been made in pursuance of the power hereinbefore given for that purpose) then and in such case the said (*grantee*) his executors, administrators, or assigns, shall and will at the request and at the costs and charges of the said (*grantor*) his heirs, executors, or administrators, acknowledge satisfaction of the said judgment upon the record thereof; and then and in such case the said (*trustee*) his heirs or assigns, shall and will, at the like request and costs and charges, reconvey or otherwise assure all and singular the messuages, lands, hereditaments, and premises hereinbefore demised or otherwise assured to him and them as aforesaid, (subject only to any charge or disposition which shall not have been made thereof in pursuance of these presents, or so much thereof as shall not have been so disposed of unto and to

the use of the said (*grantor*) his heirs or assigns, or as he or they shall lawfully require, and also transfer or assign the neat produce of the money which shall have accrued from such parts thereof (if any) as shall have been so disposed of (after payment and satisfaction of all such arrears, costs, and charges, as aforesaid) or the securities upon which the same shall have been placed out or invested unto him the said (*grantor*) his executors, administrators, or assigns, to and for his and their own proper use and benefit.] IN WITNESS, &c.

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Tail

* See various provisos, &c. to be added where circumstances may require them, *ante*, No. II. p. 75, *et seq.* and Vol. V. No. III. p. 87, *et seq.* Provisos, &c.

ANNUITIES.

By Tenant in
Tail.

(A) *The Form of some eminent Practitioners differs something from that ante, p. 142, and is as follows:*

“ NOW THIS INDENTURE WITNESSETH, that in pursuance of and for effectuating the said recited agreement, and in consideration of the sum of £ of lawful and current money, &c. by the said (*grantee*) in hand well and truly paid, at or immediately before the sealing and delivering these presents, unto the said (*grantor*) the receipt whereof he the said (*grantor*) doth hereby admit and acknowledge, and of and from the same and every part thereof doth acquit, release, and discharge the said (*grantee*) his heirs, executors, and administrators, and every of them for ever by these presents. And also in consideration of the sum of five shillings of like lawful money by the said (*trustee*) unto the said (*grantor*) paid at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, He the said (*grantor*) at the request and by the direction, and at the nomination of the said (*grantee*) (testified by his being a party to and signing and sealing and delivering these presents) hath granted, bargained, sold, and released, and by these presents doth grant, bargain, sell, and release, unto the said (*trustee*) in his actual possession, &c. and his heirs, ALL, &c. Together with the rights, members, and appurtenances, to the said messuages, farms, lands, hereditaments and premises, mentioned to be hereby granted and released, or any part thereof belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, yearly and other rent, issues, and profits of all the same hereditaments and premises, and every part and parcel thereof, and all the estate, right, title, interest, use, trust, possession, property, claim and demand whatsoever, as well in equity as at law, of him the said (*grantor*) of, to, in, or out of the same, and every or any part thereof. TO HAVE AND TO HOLD the said messuages, farms, lands, tenements, hereditaments, and premises hereinbefore men-

tioned to be hereby granted and released as aforesaid, and every part and parcel thereof, with their appurtenances, unto the said (*trustee*) and his heirs, to and for the several uses, intents, and purposes, upon the several trusts and with, under, and subject to the provisos, declarations, and agreements hereinafter limited, declared, or expressed, and contained of and concerning the same (that is to say) To the use, intent, and purpose, that the said (*grantee*) his executors, administrators, or assigns, shall and may henceforth, out of and from the messuages, farms, lands, tenements, hereditaments, and premises hereinbefore mentioned to be hereby granted and released as aforesaid, or any part thereof, have, receive, and take yearly and every year for and during the natural life of him the said (*grantee*) one clear annual sum or yearly rent of £ of lawful English money, clear of all deductions, to be yearly issuing and payable out of and from the same hereditaments and premises, and every or any part thereof, henceforth and for ever, and to be paid at, &c, and to this further use, intent, and purpose," &c. *as ante*, p. 148.

ANNUITIES.

By Tenant in Tail.

Others effect the same object by way of trust, as (after granting the annuity).

" AND subject to the said yearly rent of £ and to the powers and remedies hereinbefore given or limited for the recovery thereof as aforesaid, To the use of the said (*trustee*) and his heirs, upon the trusts hereinafter declared or expressed of and concerning the same (that is to say) upon trust for the further and better securing unto the said (*grantee*) and his executors and assigns, the full and due payment of the said annual sum or yearly rent of £ hereinbefore limited to him during his life as aforesaid, together with such proportionate part thereof as aforesaid, clear of charges and incumbrances in respect of taxes or otherwise howsoever, and without any deduction or abatement (save only as aforesaid) as the same shall from time to time become due and payable as aforesaid, and accordingly upon further trust from time to time to let, set, and demise the same messuages, farms, lands, tenements, and premises intended

ANNUITIES. to be hereby granted and released as aforesaid, in case the

By Tenant in
Tail.

same be not occupied by the present tenants, unto any person or persons, for any term or number of years, at the best and most rent that can be obtained from time to time for the same premises, and in case default shall be made in payment of the said clear annual sum or yearly rent of £ or any part thereof, by the space of two calendar months next after any quarterly payment thereof shall become due, then upon trust that he the said (*trustee*) his heirs or assigns, do and shall, at the request and by the direction of the said (*grantee*) his heirs or assigns, to be testified in writing under her or their hand or hands, make absolute sale," &c. *as ante*, p. 151.

But although I have extracted these variations, in order to show the different modes pursued by different practitioners, and which may occasionally be advantageously adopted on account of some peculiar feature in the title, yet, as a general form, that given in the text is, I think, to be preferred ; and see *ante*, INTRODUCTION.

ANNUITIES.

No. V.

 Secured on
Life Estate.

Grant of Annuity secured on a Life Estate (1) in Freehold Premises, under a Marriage Settlement or Will.

Variations where the Annuity is secured on a Rent Charge.

Where the Annuity is secured on Church Preferment, &c. as below (2).

THIS INDENTURE, made the day of

(1) Annuities are more usually secured on estates holden for the lives only of grantors, than on estates of inheritance, by reason of the insufficiency of life estates for securing the repayment of a sum advanced at interest, for “the practice of purchasing annuities for lives, at a certain price or premium, instead of advancing the same sum upon an ordinary loan, arises usually from the inability of the borrower to give the lender a permanent security for the return of the money borrowed at any one period of time, he therefore stipulates, in effect, to repay annually, during his life, some part of the money borrowed, together with legal interest for so much of the principal as annually remains unpaid, and an additional compensation for the extraordinary hazard run of losing that principal entirely by the contingency of the borrower’s death.”—2 Black. Com. p. 461. I have therefore inserted a distinct form for that purpose; for although it might be framed with but little difficulty from the variations subjoined to No. II. yet there will be found to be many verbal differences throughout; which a young practitioner would be apt to disregard if not placed immediately before him. See also notes and variations Vol. I. No. XXIII. p. 327, *et seq.* and Vol. V. No. VIII. p. 168, *et seq.*

(2) As to what species of life interests may be made the sub-

ANNUITIES.

*Secured on
Life Estate.*

Recital of marriage settlement.

in the year of our Lord . BETWEEN (*the grantor*) of, &c. of the first part, (*the grantee*) of, &c. of the second part, and (*a trustee*) of, &c. (a trustee named and appointed by and on the part of the said (*grantee*) for the purposes hereinafter mentioned) of the third part. WHEREAS by indentures of lease and release, bearing date, &c. the release being of parts, and made or expressed to be made between, &c. and purporting to be a settlement made in contemplation of a marriage then intended (and which afterwards took effect), between the said (*grantor*) and his then intended and now wife, the several lands and hereditaments hereinafter described were limited, settled, and assured unto trustees therein named, and their heirs, to the use (after the said marriage) of other trustees, therein also named, their executors, administrators, and assigns, for a term of one thousand years, upon the trusts thereafter mentioned, and after the expiration or other sooner determination of the said term (and in the mean time subject thereto), to the use of the said (*grantor*) and his assigns, for his natural life, without impeachment of waste, (voluntary waste in pulling down houses and buildings and not rebuilding the same, or in ploughing or breaking up marsh land only ex-

ject of a security for an annuity or other payment, see *ante*, Vol. V. p. 190, n. (2). That a rectory may be charged with the payment of an annuity, see *Thornhill v. Collington*, 1 Ch. Ca. 79; but see *ante*, Vol. V. *ub. sup.*

cepted) with remainders over as therein expressed, in which said indenture was contained a proviso empowering the said (*trustees*) or the survivor of them, or other the acting trustee or trustees for the time being of the said hereditaments, to sell or dispose of or exchange the same, or any part thereof, and invest the monies arising therefrom in the purchase of other hereditaments, and settle the same to, upon, and for the same uses and trusts, and subject to the same powers, conditions, and agreements, as were thereby limited and declared concerning the hereditaments which should be so sold or exchanged, and in the mean time to place out such sum or sums of money at interest, either in the parliamentary stocks or public funds of Great Britain, or upon real securities in England in the name or names of such trustees or trustee, and to alter, vary, and transpose the said stocks, funds, and securities, as occasion might require. AND it was thereby further declared, that the dividends, interest, and annual produce arising from such stocks, funds, or securities, should go and be paid to such person or persons, or be applied to, upon, and for such uses, trusts, intents and purposes, and in such manner as the rents and profits of the hereditaments so to be purchased therewith would go or be payable, in case such purchase or purchases and settlement were or had been actually made(1).

ANNUITIES.

*Secured on
Life Estate.*

(1) If the life estate of the grantor is derived under a will, WILL. recite, as *ante*, Vol. V. p. 187.

ANNUITIES.

*Secured on
Life Estate.*

Contract for
purchase.

AND WHEREAS the said (*grantor*) has agreed with the said (*grantee*) for the sale to him of an annuity, or yearly sum of £ during the natural life of him the said (*grantor*) for the price or sum of £ to be secured by the bond or obligation of the said (*grantor*) and a warrant of attorney to confess judgment thereof, and also by such demise or assurance of the aforesaid messuages, &c. and

Secured on
rent charge.

If the annuity is to be secured on a rent charge, recite (if created by will),

“ WHEREAS , of, &c. in or by his last will and testament in writing, bearing date on or about, &c. (duly executed and attested, for the devise of real estates) amongst other things gave and bequeathed unto the said (*grantor*) one clear annuity of £ to be payable to him during the term of his natural life, by four equal quarterly payments on the day of, &c. in every year, and did thereby charge and make liable all and every his estates, as well real as personal, with the payment of the same. AND whereas the said testator departed this life on or about, &c. without revoking the bequest, and the said will was soon after his decease duly proved in the prerogative court of, &c. by the executors therein named, and the said (*grantor*) hath ever since been paid, and in the receipt and enjoyment of the said annuity by virtue of the said will.”

Secured on
church preferment:

If the grantor's estate is church preferment, recite,

“ AND whereas the said (*grantor*) is seised of, and been regularly instituted and inducted to the rectory (*or vicarage, &c. as the case may be*) of the parish church of in the county of with the rights, members, and appurtenances, and entitled to the issues, profits, proceeds, and emoluments of the same, to and for his own sole use and benefit.”

premises (1), as hereinafter is expressed. **AND ANNUITIES:**
WHEREAS in pursuance and part performance of the
said agreement the said (*grantor*) by his bond or
obligation, &c. *as ante* (2). **NOW THIS INDENTURE**
WITNESSETH, that in pursuance and further per-
formance of the agreement on the part of the said
(*grantor*) and for and in consideration of the sum
of £ of good and lawful money of that part of
the United Kingdom of Great Britain and Ireland
called England, to the said (*grantor*) in hand well
and truly paid by the said (*grantee*) at or imme-
diately before the sealing and delivery of these pre-
sents, [being the same sum of £ as is men-
tioned in the condition of the hereinbefore in part
recited bond,] the receipt of which said sum of
£ and that the same is in full for the pur-
chase of the said annuity, or yearly sum of £
the said (*grantor*) doth hereby acknowledge, [and
of and from the same and every part thereof doth
acquit, release, exonerate, and for ever discharge
the said (*grantee*) his executors and administrators,
by these presents,] **HE** the said (*grantor*) **HATH**
given, granted, bargained, and sold, and by these
presents **DOETH** give, grant, bargain, and sell unto
the said (*grantee*) his executors, administrators,

*Secured on
Life Estate.*

WITNESS, in
consideration,
&c.

**Grantor grants
the annuity.**

(1) If the annuity is to be secured on a rectory, or the like, **Church prefer-**
ment.
say,

“The said rectory or vicarage of the parish church of
aforesaid.”

(2) If a warrant of attorney only is intended to be taken, see **Warrant of**
ante, No. II. p. 14, n. (8), 15, n. (9), 16, n. (13). **attorney.**

ANNUITIES.

*Secured on
Life Estate.*

To HOLD to
grantee for life
of grantor.

and assigns, one clear annuity or yearly sum of £ of such lawful and current money as is aforesaid, free and clear of and from all abatements and deductions whatsoever, to be charged and chargeable upon, and issuing and payable, and had, received, and taken out of and from all (1) and singular the messuages, lands, tenements, and hereditaments comprised in the said in part recited indentures of lease and release, or settlement of the day of , (2) and hereinafter described and demised, or intended so to be. To HAVE, HOLD, receive, perceive, take, and enjoy the said annuity, or clear yearly sum of £ hereby granted or secured, or expressed or intended so to be, unto and by him the said (*grantee*) his executors, administrators, and assigns, from henceforth for and during the natural life [and for the use and benefit] of him the said (*grantor*) and to

What life interests chargeable.

(1) As to what life interests of the grantor are chargeable with annuities, or other payments, see *ante*, Vol. V. No. VIII. p. 190, n. (3).

Church preferment.

(2) If the security be a rectory, or the like, say,

“The said rectory or vicarage of the parish church of , and the glebe lands, tithes, fees, dues, profits, and emoluments thereof.”

Rent charge.

If the annuity is to be charged upon an annuity or rent charge of the grantor, say,

“The said annuity, yearly rent charge, or clear annual sum of £ so bequeathed to him, by the said in part recited will of, &c. [or to which he is entitled under or by virtue of the said in part recited indentures of settlement, of, &c. *as the case may be.*]

be paid and payable at or in the common dining-hall of the Inner Temple, London, by four equal quarterly payments, between the hours of ten and twelve of the clock in the forenoon on the several days and times next hereinafter mentioned (that is to say) on the day of , the day of , the day of , and the day of , in every year, and also a due and proportionable part of the said annuity, or yearly sum, for or in respect of so many days as may happen to have elapsed from the last half yearly day of payment thereof next preceding the decease of the said (*grantor*) up to and including the day of his death; all and every of which said payments are and is to be made free and clear of and from any deduction or abatement whatsoever, [for or on account of any taxes, charges, rates, assessments or other matter or thing whatsoever,] and the first payment thereof to be made on the day of next ensuing the date of these presents, if he the said (*grantor*) shall be then living, and if not, then a proportionate part thereof immediately upon his decease. AND the said (*grantor*) for himself, his heirs, executors, and administrators, doth covenant, promise, and agree to and with the said (*grantee*) his executors, administrators, and assigns, by these presents, in the manner following (that is to say) (*Covenant to pay the annuity, and power of distress, entry, &c.* (1).) AND

ANNUITIES.

*Secured on
Life Estate.*

Covenant to
pay annuity.

(1) *As ante*, No. II. p. 24, *et seq.*

It has been questioned, how far a distress can be made upon

Distress, &c.

Church preferment.

ANNUITIES.

*Secured on
Life Estate.*

FURTHER
WITNESS.

Demise of pre-
mises to a trus-
tee.

WHEREAS upon the treaty for the purchase of the said annuity it was agreed that for better securing the payment thereof, the said (*grantor*) should demise and assure the several hereditaments and premises hereinbefore made chargeable therewith, unto the said (*trustee*) upon the trusts hereinafter declared concerning the same. Now THIS INDENTURE FURTHER WITNESSETH, that in pursuance of the said last mentioned agreement, [and for and in consideration of the sum of ten shillings of lawful current money of England, to the said (*grantor*) in hand well and truly paid by the said (*trustee*) at or before the execution of these presents, the receipt whereof is hereby acknowledged, HE the said (*grantor*) at the request and nomination of the said (*grantee*) testified by his being a party to and signing and sealing these presents, HATH granted, bargained, sold, and demised, and by these presents DOTH grant, bargain, sell and demise unto the said (*trustee*) his executors, administrators, and assigns, all and singular the several messuages or tenements, lands, hereditaments, and other the premises described or comprised in, and mentioned or intended to be released, or otherwise assured, by the hereinbefore in part recited indentures of lease and release of the said days of as hereinbefore is

the proceeds of a rectory, or the like, see 1 Inst. 4; but the power is usually, (see 4 Pow. Prec. 91), and, I apprehend, properly inserted, and see *Thornlike v. Collington*, 1 Ch. Ca. 79.

mentioned, and all houses, out-houses (1), &c. **ANNUITIES.**

To HAVE AND TO HOLD the said messuages or tenements, lands, hereditaments (2), and all and singular other the premises hereby granted and demised, or otherwise assured, or intended so to be, with their and every of their respective rights, members, and appurtenances, unto and by him the said (*trustee*) his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during the full end and term of years thence next ensuing, if he the said (*grantor*) shall so long live (3); But

Secured on
Life Estate.

To hold for a
term of years.

(1) Add GENERAL WORDS, as *ante*, No. II. p. 31.

If the demise be of a rectory, or the like, say,

“All that rectory or vicarage of the parish church of , in the county of , together with all messuages, outhouses, barns, stables, glebe, and other lands, and all and all manner of tenths, tithes, oblations, obventions, fees, dues, profits, fruits, perquisites, emoluments, rights, members, and appurtenances whatsoever, to the same belonging or incident, and the reversion, &c.” *as above*.

General words.
Church prefer-
ment.

If the annuity be to issue out of an annuity, or rent charge, say

“Hath granted, &c. (*or if a personal annuity*) bargained, sold, assigned, transferred, and set over, and by these presents, Doth, &c. unto the said (*grantee*) his executors, &c. All that, &c. as *ante*, Vol. III. p. 75, and all and every the powers and remedies in or by the said will [*or settlement*] given to him the said (*grantor*) his executors, &c. for securing and recovering the same. And all the estate,” &c. (*as in other cases*).

Rent charge.

(2) If it be a rectory, or the like, say, *as above*, p. 172, n. (2).

If it be a rent charge, or an annuity, see *ib.*

(3) As an estate for life will, in presumption of law, have a

Church prefer-
ment.
Rent charge.
Term for years.

ANNUITIES.

*Secured on
Life Estate.*

Usual trusts.

Covenant by
grantor that the
premises are not
incumbered.

nevertheless upon the trusts, and to and for the ends, intents, and purposes, and under and subject to the provisos, declarations, and agreements hereinafter declared or expressed concerning the same, (that is to say) UPON TRUST, &c. (*usual trusts, &c. 'as ante*), (1). AND the said (*grantor*) doth lastly, in manner aforesaid, covenant and declare, that the said (*trustees of recited settlement or will*) have not at any time heretofore, by or with the direction or privity, or with the knowledge of him the said (*grantor*) in pursuance of the power or authority vested in them by the said in part recited indenture of release, by way of settlement, or otherwise howsoever, sold, exchanged, or conveyed, or otherwise disposed of, or charged or incumbered the hereditaments and premises hereinbefore demised, or otherwise assured, or mentioned or intended so to be, or any part thereof, or otherwise exonerated or released

longer duration than an estate for a limited number of years, however long the period, and as the limiting the estate to the grantee for a term leaves a reversionary estate in the grantor, (see Gilb. Ten. 327;) and at the same time gives to the grantee all beneficial advantages to be derived from the grantor's estate, and (where the term is demised to the grantee) vests it in the same persons, in case of his death, as will be entitled to the annuity: it is a very usual, and generally a proper mode.

Trusts, &c.

(1) Insert trusts, &c. &c. similar to those, *ante*, p. 35, *et seq.*; and add covenants for title, &c. as *ante*, Vol. V. No. V. p. 195.

Church preferment.
Rent charge.

If it be church preferment, add the covenant, *post*, rider (A). And if the security be a rent charge or annuity, add covenant for title, &c. as *ante*, Vol. III. Nos. XCV. XCVI.; power of attorney to receive it as *post*, rider (B).

the same, or any part thereof, from the limitations or uses therein contained, or any of them; and that he the said (*grantor*) shall not nor will at any time or times hereafter or so long as the said annuity of £ hereby granted, or any part thereof, shall be a subsisting charge upon the said premises, sell, dispose of, or convey in exchange, or permit to be sold or disposed of, or conveyed in exchange, without the consent in writing under the hand of the said (*trustee*) his executors, administrators, or assigns, to be attested by two or more credible witnesses, being first had and obtained for that purpose, any of the said messuages, &c. or any part thereof, or his or their interest therein, in any manner howsoever. PROVIDED ALWAYS, and it is hereby expressly declared and agreed by and on the part of the said (*grantor*) so far as he is interested in the hereditaments hereby charged or chargeable with the payment of the said annuity, or yearly sum of £ or mentioned or intended so to be as aforesaid, that in case the same, or any of them, or any part or parcel thereof respectively, shall at any time or times during the subsistence or continuance of the said annuity, or yearly sum, be sold, or otherwise disposed of, or varied, or changed by the trustees or trustee thereof for the time being, in pursuance of any of the trusts, powers, or authorities in the said in part recited indentures of settlement contained, or otherwise, or in case any bank annuities, or other funds or securities to be produced from or by the same, shall be redeemed or repurchased by government, then and

ANNUITIES.

Secured on
Life Estate.

If the premises
sold or ex-
changed, the
new premises
to be charged
in like manner.

ANNUITIES. in either of the said cases the money which shall be produced by any such sale or disposition of the said hereditaments, funds, or securities, or any part thereof, and all and every other the hereditaments, funds, and securities whereupon such money shall be laid out or invested, and the rents, issues, and profits, and dividends, interests, and proceeds thereof respectively, shall at all times, and from time to time during the subsistence of the said annuity or yearly sum of £ be and remain subject to and bound by these presents, and the several clauses, provisos, and agreements hereinbefore contained, in like manner in all respects as the messuages, lands, and hereditaments, monies, funds, and securities, and the rents, issues, and profits, and dividends, interest, and proceeds hereinbefore particularly described or referred unto, are or is by these presents subject to and bounden thereby, and shall be charged and chargeable, and assigned and assured accordingly. AND the said (*grantor*) doth (*Covenant to appear at insurance office, &c. &c.*) (1). IN WITNESS, &c.

(1) See *ante*, p. 59.

Title deeds.

If any of the title deeds are not delivered over to the grantee, add covenant to produce them, as *ante*, p. 116, and *post*, p. 183, (C).

Provisos, &c.

. See various provisos, &c. to be added where circumstances may require, *ante*, No. II. p. 84, *et seq.*

ANNUITIES.

Secured on
Life Estate.

(A) *If the Annuity be secured on Church Preferment, add (ante, p. 176, n. (2),) a Covenant by the Grantor that he will not resign, &c. as,*

And that he the said (grantor) shall not nor will at any time or times hereafter, without the privity and full consent of the said (grantee) his executors, administrators, or assigns, to be testified in writing under his or their hand or hands first had and obtained, accept or take any other preferment in the church, or place of emolument whatsoever, in exchange or in lieu of or for the said rectory or vicarage of, &c. so as or whereby the said rectory or vicarage, or the emoluments thereof, or of any part thereof, shall or may be vacated or lost. AND further that if the said (grantor) shall at any time hereafter, with such consent of the said (grantee) his executors, administrators, or assigns as aforesaid, or otherwise, accept and take any other preferment in the church, or place of employment whatsoever, in lieu or exchange of or for the said rectory or vicarage of, &c. then and in that case the said preferment, or place of emolument, which shall be so accepted or taken by him, and all and every the profits or emoluments thereof, shall be from thenceforth subject and liable to the like distress and entry, and be otherwise chargeable with the said annuity or yearly sum of £ hereby granted as aforesaid, in like manner and for the same uses, intents, and purposes as the said rectory, vicarage, and emoluments are by these presents made or intended to be made chargeable therewith. AND further that he the said (grantor) shall and will within the space of calendar months next after any such exchange or acceptance of any other preferment or place of emolument, at the request of the said (grantee) his executors, administrators, and assigns, charge the said annuity or yearly sum of £ upon the same and all and every the emoluments and income to be had or derived therefrom, by such good and sufficient con-

Covenant by
grantor not to
resign living,
&c.

ANNUITIES. veyances or assurances, and in such manner as the counsel
 in the law of the said (*grantee*) his executors, admini-
 strators, or assigns, shall reasonably advise or require in
 their behalf. And further that in case the said annuity
 or yearly sum of £ or any part thereof shall happen
 to be behind or unpaid by the space of days next
 over or after any of the said days or times when the
 same is hereinbefore appointed to be paid as aforesaid, and
 the said (*grantor*) shall deem it necessary or think proper
 to sequester the said rectory or vicarage, that then and in
 that case it shall and may be lawful to and for the said
 (*grantee*) his executors, administrators, and assigns, and
 the said (*grantor*) doth hereby fully authorise and em-
 power him the said (*grantee*) his executors, administrators,
 and assigns, to sequester the same, and to instruct any one
 or more counsel or civilian in the law to act for the said
 (*grantor*) and in his name either in any courts of com-
 mon law, civil law, equity, or elsewhere, as occasion may
 require, to assent to and concur in all such proceed-
 ings as may be necessary to obtain an immediate seques-
 tration of the said rectory or vicarage, without giving
 notice to or advising with the said (*grantor*) thereupon,
 notwithstanding any rule of such courts of law or equity to
 the contrary, and the said (*grantor*) doth hereby renounce
 on his part all benefit and advantage of such rules or orders
 of such courts of law or equity, and doth agree to confirm
 all and whatsoever the said (*grantee*) his executors, admini-
 strators, or assigns, or his or their counsel, shall do or cause
 to be done in or concerning the premises."

Secured on
Life Estate.

Power of se-
questration.

ANNUITIES.

*Secured on
Life Estate.*

(B) *If the Annuity be secured on another Annuity or a Rent Charge, add (ante, p. 176, n. (2),) Power of Attorney to Receive, as*

“AND for the better and more effectually securing the due and punctual payment of the said annuity of £ , at the times and in the manner hereinbefore appointed for payment thereof, it is hereby declared and agreed by and between the parties to these presents, that it shall and may be lawful to and for the said (*grantee*) his executors, administrators, and assigns, and he or they are hereby constituted and appointed the lawful attorney and attornies of him the said (*grantor*) from time to time and at all times hereafter during the term of the natural life of the said (*grantor*) in case default shall happen to be made by him in the payment of the said annuity or yearly sum of £ hereby granted as aforesaid, or intended so to be, to ask, demand, and receive the same of and from the said (*trustees of the rent*) and of and from all and every or any other person or persons who for the time being shall be in the enjoyment and possession of the said annuity or yearly rent charge of £ hereby charged as aforesaid, or of the hereditaments whereout the same is payable, and upon receipt thereof, or of any part thereof, releases, acquittances, or other proper discharges from time to time to make and give for the same, either in the name or names of him the said (*grantee*) his executors, administrators, or assigns, or in the name or names of the said (*grantor*) as occasion shall require, and upon non-payment thereof, or of any part thereof, in the name or names, and in manner aforesaid, to have, use, exercise, and prosecute all such powers, remedies, proceedings, expedients, and means whatsoever, either by distress, receipt of the rents and profits of the said estates, or any part thereof, or otherwise, and in such manner as he the said (*grantor*) might or could personally have done in that behalf, in case these presents had not been made.

Power of attorney to receive.

ANNUITIES: AND the said (*grantor*) doth hereby direct and appoint the said (*trustees*) their heirs and assigns, and all persons whom it doth or may concern, from time to time, during the term of the natural life of the said (*grantor*) to pay the said annuity or yearly sum of £ hereby granted or secured, or intended so to be, out of the said annuity or yearly rent of £ hereby made chargeable therewith, when and as the same shall from time to time become due and payable, unto the said (*grantee*) his executors, administrators, and assigns, or unto such person or persons as he or they shall duly authorize to receive the same, and doth hereby consent and declare that then the receipt or receipts of him, or of such person or persons as he or they shall so appoint or direct to receive the same, shall be as good and effectual to all intents and purposes as if the said (*grantor*) had signed the same, and that the same, when so paid as aforesaid, shall be considered and taken as and for an actual payment to him the said (*grantor*) on account of the said annuity or yearly rent of £ so hereby made chargeable as aforesaid."

*Secured on
Life Estate.*

Direction
for trustees of
rent to pay
to grantee.

ANNUITIES.

Secured on
Life Estate.

(C) *Covenant to produce Title Deeds.* See *ante*, p. 178.

Production of
title deeds.

If the title deeds are not to be delivered to the grantee, add a covenant for the production of them, as *ante*, p. 116, (M), with the addition of

"PROVIDED ALWAYS, and it is hereby agreed and declared by and between the said (*grantor*) and (*grantee*) that upon every such delivery or production of the said deeds, evidences, and writings, or any of them as aforesaid, if the same shall be delivered out of the custody or possession of the said (*grantor*) his counsel or solicitor, the said (*grantee*) his executors, administrators, or assigns, shall and will, if thereunto required, sign and deliver to the said (*grantor*) or his assigns, and he or they are hereby declared to be entitled to an express and particular acknowledgment, or receipt in writing, under the hand or respective hands of the said (*grantee*) his executors, administrators, or assigns, of or for the same, and in which said receipt or acknowledgment there shall be contained a sufficient and satisfactory undertaking for the redelivery of the said deeds and evidences unto the said (*grantor*) or his assigns, when and as soon as the same shall have been used for the purposes aforesaid, whole, uncanceled, and undefaced (damage by fire or other unavoidable accident only excepted)."

ANNUITIES.

Secured on
Copyholds.

No. VI.

Grant of an Annuity secured upon a Copyhold Estate of Inheritance, during the Life of the Grantor.

Variations where it is for the Life of the Grantee, or the Lives of Nominees.

Also where the Estate is in Mortgage.

Where subject to a former Annuity.

Where the Grantor is Tenant in Tail, or for Life.

Where the Deed of Grant is executed before, and where after, or at the Time of the Surrender, &c. &c. as in margin below (1).

THIS INDENTURE, of two parts, made the day of _____, in the _____ year of the reign, &c. and in the year of our Lord _____.

PARTIES. BETWEEN (*the grantor*) of, &c. of the one part, and (*the grantee*) of, &c. of the other part. [^{*} WHEREAS the said (*grantor*) is seised to him and his heirs of a copyhold estate of inheritance in possession, according to the custom of the manor of _____, of the several messuages, lands, tenements, and heredita-

Notes, &c.

(1) See also notes and variations, Vol. I. No. XVIII. and Vol. V. No. XII.

Brevity.

* Where brevity is particularly desired, the parts within brackets may be omitted throughout the precedent.

ments hereinafter described (1).] **AND WHEREAS** **ANNUITIES.**
the said (*grantee*) hath agreed with the said

*Secured on
Copyholds.*

Contract for
purchase.

(1) If the annuity be granted in pursuance of a prior agree-
ment in writing, recite such agreement, as in No. II. p. 13,
n. (†).

Prior agree-
ment.

If the estate intended to be charged with the payment of the
annuity be already in mortgage, such mortgage may (but need
not) be recited thus,

Mortgage.

“ **AND WHEREAS** by a surrender duly made of the said
lands and hereditaments at a court holden for the said
manor on the day of , which was in the year
 , in pursuance of an indenture bearing date the
day of , and made between, &c., the same were sur-
rendered into the hands of the lord of the said manor, to
the use of the said (*mortgagee*) and his heirs, subject to a
condition therein contained for making void the same on
repayment of the sum of £ and interest, on a day
therein mentioned, and now past.”

Recital of a
previous mort-
gage.

If the estate be subject to a former annuity, the recital may
be,

“ **AND WHEREAS** by an indenture bearing date the
day of , which was in the year , and made or
expressed to be made between the said (*grantor*) of the
one part, and (*the former grantee*) of the other part, a me-
morial whereof was duly enrolled in the High Court of
Chancery, the said (*grantor*) gave and granted unto the
said (*former grantee*) his executors, administrators, and as-
signs, for and during the term of the natural life of the said
(*grantor, or as the case was*) an annuity or clear yearly sum
of £ , to be secured by surrender of the several copyholds,
lands, and hereditaments hereinafter described in the manner
therein mentioned. And in pursuance of the said indenture,
the same lands and hereditaments, at a court holden for the
said manor, on the day of , which was in the

Recital of a
previous grant
of annuity.

ANNUITIES.

Secured on
Copyhold.

Recital of bond.

(*grantor*) for the purchase of an annuity or clear yearly sum of £ to be paid to the said (*grantee*) during the natural life (1) of the said (*grantor*) [*or (grantee) as the case may be*] (2), at the price or sum of £ and it was agreed upon the treaty for the said purchase that the same should be secured by the bond or obligation of the said (*grantor*) and a warrant of attorney, to confess judgment thereon, and also by a surrender of the said copyhold hereditaments, upon the trusts and for the purposes hereinafter expressed (3). AND WHEREAS in pursuance of the said agreement the said (*grantor*) by his bond or obligation in writing, bearing even date with

year , were surrendered into the hands of the lord of the said manor, to the use of the said (*former grantee*) and his heirs, subject to a condition therein contained for making void the same on due payment of the said annuity, at the times and in the manner therein mentioned."

Years determinable on lives.

(1) If the annuity be granted for a term of years determinable on the decease of the grantor, (and see *post*, p. 190, n. (3),) say,

"For the term of years, if he the said (*grantor*) shall so long live."

Nominees.

(2) If the annuity be granted during the lives of nominees, say,

"For the joint lives of (*the nominees*) of, &c. and the life of the survivor or longest liver of them."

Surety.

(3) If there be a surety for the grantor, see *ante*, p. 16, n. (12).

Warrant of attorney only.

If a warrant of attorney, without a bond, is to be given, see *ante*, p. 15, n. (9).

these presents, hath become bounden for himself **ANNUITIES.**
 and his heirs, unto the said (*grantee*) his exe-
 cutors, administrators, and assigns, in the penal Secured on
 sum of £ , with a condition thereunder Copyholder
 written for making void the same on payment of
 the said annuity, or yearly sum of £ , on
 the days, at the times, and in the manner therein
 and hereinafter particularly mentioned. **AND** And warrant of
 hath also executed a warrant of attorney, bearing attorney.
 even date with the said bond, empowering cer-
 tain attornies therein named to confess judgment
 (1) against him in an action of debt on the said
 bond, in the court of at Westminster, in
 or as of term next, or any subsequent
 term, for the said sum of £ together with
 costs of suit, [as in and by the said bond and
 warrant of attorney, reference being thereunto
 respectively had, will more fully appear; and it
 is intended that judgment shall be forthwith en-
 tered up on the said bond by virtue of the said
 warrant of attorney, but that no execution shall
 be issued out upon the said judgment until such
 default shall have been made in payment of the
 annuity as hereinafter is mentioned.] Now **THIS** Witness, that in
INDENTURE WITNESSETH, that in pursuance and consideration of
 further performance of the said agreement on the

(1) Although a judgment will not attach upon copyholds, see Judgment.
Canon v. Puck, 9 Eq. Ca. Ab. 222; 6 Vin. Ab. 226, pl. 6; yet
 it will bind the goods, &c. of the copyholder, and give priority
 as in other cases, and therefore adds materially to the grantee's
 security: *Gilb. Ten.* 327.

ANNUITIES.

*Secured on
Copyholds.*

The grantor
grants, &c. the
annuity.

part of the said (*grantor*) and for and in consideration of the sum of £ of lawful money, of the United Kingdom of Great Britain and Ireland, and current in England, to the said (*grantor*) in hand well and truly paid by the said (*grantee*) at or immediately before the sealing and delivery of these presents (*or otherwise as the case may be*) (1) [being the same sum of £ as is mentioned in the condition of the hereinbefore in part recited bond;] the receipt of which said sum of £ [and that the same is in full for the purchase of the said annuity, or yearly sum of £] the said (*grantor*) doth hereby acknowledge, [and of and from the same and every part thereof doth acquit, release, exonerate, and for ever discharge the said (*grantee*) his executors and administrators, by these presents.] [He the said (*grantor*) (2) HATH given, granted, bargained, and sold, and by these presents DOTH for himself, his heirs, executors, and administrators, give, grant, bargain, and sell unto [and for the use and benefit of] the said (*grantee*) his

Consideration.

(1) If the consideration be other than money paid down, see No. II. p. 75, (A).

Mortgage, &c.

(2) If the purchase money be applied in paying off a subsisting mortgage, or repurchasing a prior annuity, the interest of the mortgagee or annuitant must here be released to the grantee; see *ante*, p. 78.

Brevity.

Where brevity is particularly desirable, this *grant* of the annuity (which adds little or nothing to the grantee's security) may be omitted; in which case go to covenant for payment, *post*, p. 192, marg. *.

executors, administrators, and assigns (1), one **ANNUITIES.**
 annuity (2) or clear yearly sum of £ , of **Secured on Copyholds.**
 lawful money of that part of the United Kingdom
 of Great Britain and Ireland called England (3),
 [To HAVE AND TO HOLD, receive, perceive, take, **To hold to the**
 and enjoy the said annuity, or clear yearly sum of **grantee during**
 £ hereby granted or expressed, or intended **the life of the**
 so to be, unto and by him the said (*grantee*) his **grantor.**

(1) If the annuity be granted during the lives of nominees, **Nominees.**
 say,

“ For and during the joint natural lives of the said
 (*nominees*) and the life of the survivor or longest liver of
 them.”

If the grantee be not the person to be beneficially interested
 in the annuity, see *ante*, p. 22, n. (25).

(2) As a *rent charge* is strictly an annual sum, for which **“ Rent charge.”**
 the premises subject to the payment of it are charged with a
distress, (Co. Lit. 143, b.) to which these copyholds are not
 made liable, see *post*, that term is here omitted throughout.

(3) A copyholder being, in notion of law, considered to be **Charge, &c.**
 merely a tenant at will to the lord, and therefore liable to for- **upon copyholds.**
 feiture by the exercise of any act of dominion over them which
 is not warranted by the custom of the manor, care must be
 taken in all transactions by the tenant, in which the copyholds
 are implicated, to guard against that consequence. Hence the
 charge of the annuity upon and declaration that it shall be
 issuable out of the premises, as is usual and proper in the case
 of other hereditaments, is generally, for precaution sake, omitted;
 but it is pleasing to observe that the ancient austerity of the
 law derived from and adapted to the manners and customs of
 our ancestors, is every day, by little and little, giving way to
 doctrines more suited to the present times, and will, it is
 hoped, sooner or later, be wholly supplanted by those of reason
 and good sense, to the entire exclusion of all such technical
 niceties as are calculated to mislead the uninformed, without
 being productive of any correspondent advantage; and see *post*,
 p. 193, n. (2).

ANNUITIES.

*Extracted from
Copyholds.*

executors, administrators (1), and assigns (2),] from henceforth for and during the term of the natural life (3) of the said (*grantor*) [or (*grantee*)] (4), and up to the day of his decease the said annuity or clear annual sum of £ , to be paid and payable at or in the common dining-hall of the Inner Temple, London, unless elsewhere lawfully demanded, by four equal quarterly payments, between the hours of ten and twelve of the clock in the forenoon of the several days and times next hereinafter mentioned (that is to say) the day of , the day of , the day of , and the

Life of grantee.

(1) If the annuity be granted during the life of the grantee only, omit the words, "executors and administrators."

Tenants in common.

(2) If the annuity be granted to two or more persons as tenants in common, see No. II. p. 81, n. (24); also *ib.* p. 80.

Years determinable on lives.

(3) If the annuity be granted for a term of years determinable on a life or lives, say,

"For the term of years, if they the said (*nominees*) or any or either of them shall so long live."

Autre vie.

See *ante*, No. II. p. 22, notes, where doubts are noticed as to estates, *pur autre vie*, being limitable to the personal representatives of the grantee in case of freeholds, notwithstanding the statute of 29 Car. II. and 14 Geo. II. which doubts suggest still greater necessity for caution in respect of copyholds, to which those statutes do not extend; *Zouch v. Forse*, 7 East. Rep. 186, and see 1 Watk. Copyh. 302; also *ante*, p. 176, n. (1); and *post*, p. 196, n. (1).

Nominees.

(4) If the annuity be granted during the lives of nominees, say,

"For and during the term of the natural lives of the said (*nominees*) and the life of the survivor or longest liver of them, and up to the day of his or her decease."

day of _____, in every year, and also a due **ANNUITIES.**
 and proportionate part of the same annuity, for or
 in respect of so many days as may happen to have **Secured on**
 elapsed from the last quarterly day of payment **Copyholder.**
 thereof, next preceding the decease of the said
 (*grantor*) [*or (grantee)*] (1) up to and until the
 day of his or her death (being the same days and
 times as are mentioned in the condition of the
 hereinbefore in part recited bond [*or the defea-*
zance of the said warrant of attorney]) and all
 and every of which said payments are and is to
 be made free and clear of and from any deduction
 or abatement whatsoever [*for or on account of*
any taxes, rates, duties, assessments, or other
matter, cause, or thing whatsoever, now being, or
hereafter to be chargeable, assessed, or payable
for, upon, or in respect of the said annuity or
yearly sum of £ _____, or any part thereof, or
the premises hereby charged with the payment
of the same, or the said (grantee) his executors,
administrators, or assigns, either by authority of
parliament or otherwise howsoever, and whether
any such as may hereafter be imposed or shall be
in the nature of those now in being or not (2).]

(1) If the grant be during the lives of nominees, say,

Nominees.

“The decease of the survivor or longest liver of them
 the said (*nominees*).”

(2) If there be any property or income tax subsisting, add,

Property tax.

“Save only and except such deduction or abatement as

ANNUITIES:

Secured on
Copyholds.

Covenant by
grantor for
payment of the
annuity.

*

the first payment of the said annuity or clear yearly sum of £ , to be made on the day of now next ensuing the date of these presents, if he the said (*grantor*) [or (*grantee*)] (1) shall be then living, or if not, then such proportionate part thereof as aforesaid, immediately upon his decease.] AND the said (*grantor*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, grant, and agree, with and to the said (*grantee*) his executors, administrators, and assigns, in the manner following, (that is to say) that he the said (*grantor*) his heirs, executors, or administrators, shall and will from time to time, and at all times hereafter, during the natural life of him the said (*grantor*) [or (*grantee*)] (2) or other the time or period of the subsistence of the said annuity, well and truly pay or cause to be

the said (*grantor*) his executors or administrators, shall or may be required or authorised to make thereout for the use of government, for or in respect of the present or any future tax or duty upon property or income."

Nominees.

(1) If the grant be during the lives of nominees, say,

"If they the said (*nominees*) or any or either of them shall be then living, and if not, then a proportionate part thereof immediately upon the decease of the survivor or longest liver of them, up to the day of his or her decease."

Nominees.

(2) If the grant be during the lives of nominees, say,

"During the joint natural lives of the said (*nominees*) and the life of the survivor or longest liver of them."

paid unto the said (*grantee*) his executors, administrators, and assigns, the said annuity or clear yearly sum of £ , at and upon the times and days and in the manner hereinbefore [and in the condition of the said in part recited bond] appointed for payment thereof, and also a proportionate part of the same annuity, from the commencement of any quarter wherein the said (*grantor*) [or (*grantee*)] (1) shall happen to die, up to and until the day of his death, according to the true intent and meaning of these presents. And, &c. (*add usual clause of distress*) (2). AND

ANNUITIES.

Secured on
Copyholds.

FURTHER
WITNESS,

(1) If the grant be during the lives of nominees, say,

Nominees.

“The survivor of them the said (*nominees*).”

(2) The powers of distress and entry usually given on the grant of annuities charged upon freehold lands, in case of the annuity being in arrear, and also a demise to a trustee for a term of years as a further security, it will be perceived, are here omitted, because a power of distress, it is said, being a common law remedy, and incident to the reversion only, does not belong to a copyholder, (who is considered as merely tenant at will to the lord), and that not having this power himself, he cannot grant it to another; but although a copyhold is deemed but an estate at will, yet it is only nominally and not substantially so; and as a distress will attach upon the goods and chattels only of the copyholder, and that subject to the customary services, it can in no respect prejudice the rights of the lord; there does not, therefore, appear to be sufficient reason for the omission, and see Gilb. Ten. p. 42, n. (57); *ib.* 297; 2 Watk. Copyh. 63. As, however, the 4 Geo. II. c. 28, s. 5, gives, “like remedy by distress, by impounding and selling in cases of rent seck, (*i. e.* rent not charged on land by *distress*) rents of assize and chief rents, as in cases of rent reserved upon lease, any law or usage to the contrary notwithstanding;” this act should seem to extend to copyholds, and to entitle the grantee

Distress, entry,
and demise.

ANNUITIES. THIS INDENTURE FURTHER WITNESSETH (1), that
for the considerations aforesaid, and for further

*Secured on
Copyholds.*

to the remedy by distress, without its being expressly given to him, and see Co. Lit. 185, a. Ten. 468, n. (150).

With respect to the power of *entry*, the effect of this would be, to put the grantee in possession without a surrender, and therefore forcing a tenant upon the lord without his consent: see Gilb. Ten. 181, 185; 3 Lev. 326; Co. Copyh. 149, and see *ante*, p. 189, n. (2).

And as to the *demise*, it has already been said that no longer a term than one year, (unless by the lord's licence) can be granted of copyholds otherwise than by surrender, without incurring a forfeiture of the copyholder's interest: see Vol. IV. No. XVII. p. 241, n. (2).

Surrender previously or now made.

(1) If the surrender have been already made (which, where the annuity is during the life of the grantee or the lives of nominees, and particularly if the wife of the grantor have an interest in the premises, is much the safer and better way, on account of the difficulties which may arise in procuring it in case of the death of the grantor, see *ante*, p. 84, n. (1), Vol. I. p. 233, n. (3), Vol. V. p. 276, n. (2), 278, n. (2)), the covenant in the text for surrendering them will be omitted, and the following variation inserted in its stead.

“ AND WHEREAS for better securing the due payment of the said annuity or yearly sum of £ , the said (*grantor*) at a court this day (*or as the case may be*) holden in and for the said manor of , duly surrendered into the hands of the lord of the said manor, according to the custom thereof, to the use of the said (*grantee*) his heirs and assigns, [*or executors, administrators, or assigns, see post*, 196, n. (1),] ALL, &c. to be holden at the will of the lord, according to the custom of the same manor by the rents and services thereof due and of right accustomed, subject nevertheless to a condition in the said surrender contained for making void the same, on payment by the said (*grantor*) [*his heirs, executors, or administrators,*] of the said annuity or clear yearly sum of £ to the said (*grantee*) his executors, administrators, or assigns, at the times, upon the

and more effectually securing the payment of the said annuity or yearly sum of £ , at and upon the days and times and in the manner hereinbefore appointed for payment thereof (1), He the said (*grantor*) doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said (*grantee*) his heirs

ANNUITIES.

Secured on
Copyholds.

Covenant to
surrender.

days, and in the manner therein and hereinbefore appointed for payment of the same; [and the said (*grantee*) was then and there admitted thereto, to him and his heirs accordingly," (*if the case were so*), but see *ante*, Vol. V. No. XII. p. 281, n. (2), and *post*, p. 197, n. (2),] as by reference to the court rolls of the said manor will more fully appear. AND WHEREAS upon the contract for the said annuity, it was agreed that for the further and better securing the payment thereof at the times and in the manner hereinbefore appointed for that purpose, the said (*grantor*) should upon such surrender being made, enter into such covenants, provisos, declarations, and agreements relative thereto, as hereinafter is expressed. NOW THEREFORE THIS INDENTURE FURTHER WITNESSETH, that in pursuance and performance of the said agreement on the part of the said (*grantor*), he the said (*grantor*) doth hereby for himself, his heirs, executors, and administrators, covenant, declare, and agree with and to the said (*grantee*) his heirs and assigns, in the manner following, that is to say, That, in case default shall happen to be made," &c. (*as above*), *post*, p. 200, marg. *.

If the grantor be tenant in tail of the premises, see *ante*, Tenant in tail. Vol. I. p. 208, notes, and Vol. V. p. 178, n. (4), 282, n. (1).

(1) If the wife of the grantor have an interest in the pre- mises, say, Wife.

" He the said (*grantor*) with the privity and approbation of the said his wife, (testified by her being a party to and signing and sealing these presents,) doth for himself, &c. covenant, &c. that he the said (*grantor*) and the said his wife, shall and will," &c.

ANNUITIES.

*Secured on
Copyholds.*

Parcels.

and assigns, that he the said (*grantor*) shall and will, at his own proper costs and expense, at or before the next general court which shall be hereafter holden in or for the aforesaid manor of _____, [or other] the manor or manors whereof the lands and hereditaments next hereinafter described, or any of them are holden, or at the option and request of the said (*grantee*) his executors, administrators, or assigns, at any other court holden or to be holden in or for the said manor or manors, when requested by the said (*grantee*) his heirs or assigns, surrender, or cause and procure to be surrendered, into the hand of the lord or lords, or lady or ladies of the same manor or manors, according to the custom or several customs thereof, [to the use and behoof of the said (*grantee*) his heirs and assigns (1),] ALL that copyhold or customary messuage situated, &c. or by whatsoever other name or names, de-

Term of years.

(1) Sometimes where the annuity is granted during the life of the grantor or the lives of nominees, the covenant is to surrender to the use of the grantee for a term of years, to prevent the annuity determining, at law, on the grantor's death, the stat. 29 Car. II. c. 13, s. 12, and 14 Geo. II. c. 20, s. 9, giving the benefit of estates *pur autre vie* to the executors of the tenant for life, not extending to copyholds, of which there can be no general occupant; see *Withers v. Withers*, Amb. 151; *Zouch v. Forse*, 7 East, 186; and see *ante*, p. 190, n. (3), in which case say,

“ To the use of the said (*grantee*) his executors, administrators, and assigns, for and during the term of _____ years, if the said (*grantor*) shall so long live.”

scription or descriptions, the same copyhold or customary lands and hereditaments, or any part thereof, now are, or is, or have, or hath been called, known, described, or distinguished; TOGETHER with all [houses, out-houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, water-courses, benefit of timber and other trees, woods, underwoods, rights and privileges of common of every kind, and all] and all manner of [other] rights, privileges, easements, advantages, appendances, and appurtenances whatsoever to the said messuages, lands, tenements, hereditaments, and premises, or any part thereof respectively belonging, or in any wise appertaining, or reputed, or deemed so to be, or with the same or any of them, now or heretofore holden, used, occupied, or enjoyed, AND all the estate, right, title, interest, use, trust, property, possibility, claim, and demand whatsoever, both at law and in equity, of him the said (*grantor*) in, to, out of, upon, or respecting the said hereditaments and premises, or any of them, AND also all deeds, copies of court roll, muniments and writings whatsoever, which in any wise relate to the same premises, or any part thereof, and which now are or hereafter shall or may be in his or their possession or lawful power, or the possession or lawful power of any person or persons from whom he or they can or may procure the same without action or suit at law or

ANNUITIES.

Secured on
Copyholds.

General words,
&c.

ANNUITIES.

Secured on
Copyholds.

Surrender to
enure to use of
grantee accord-
ing to the cus-
tom, &c.

in equity.] AND it is hereby declared and agreed by and between the said parties hereto, that the surrender or surrenders so [to be] made as afore-said, shall [when made and perfected] be and enure, [and that in the mean time, and until the same shall be so made and perfected, he the said (*grantor*) and his heirs shall and will stand seised or possessed of, and interested in the said mes-suages, lands, and hereditaments, with their and every of their rights, members, and appurtenances,] to and for the use of him the said (*grantee*) his heirs and assigns for ever (1); to the end and intent that he or they shall or lawfully may be admitted thereto (2), to be holden at the will of the lord, according to the custom of the said manor, and subject to the rents and services to be from

Term of years.

(1) If the surrender be to the use of the grantee for a term of years only, add as *ante*, p. 196, n. (1).

Admittance.

(2) The *cestui que vie* (or as he is usually, but improperly, called the *surrenderer*) of the surrender cannot, till admittance, recover actual possession of the premises on default; but as, until admittance, the surrenderer is considered in equity as a trustee for the *cestui que use*, *Roe v. Hicks*, 2 Wils. 15, *Holdfast v. Clapham*, 1 Durnf. and E. 600; and the *cestui que use* may also, on obtaining possession by ejectment, and giving notice to the tenant in possession, have an action against him for the rent in his hands, *Birch v. Wright*, 1 Durnf. and E. 378; and also as on admittance, the *cestui que use* would become tenant to the lord, (till which time the surrenderer remains tenant) and answerable for the service and fees; and as he may transfer (although not surrender) his interest under the grantor's co-

time to time paid and performed in respect thereof, and subject also to the several provisos, conditions, trusts, declarations, and agreements hereinafter contained respecting the same (that is to say), PROVIDED ALWAYS nevertheless, and these presents are upon this express condition (1), that if the said (*grantor*) [his heirs, executors, or administrators,] or any person or persons on his [or their] behalf, shall and do well and truly pay or cause to be paid the said annuity or clear yearly sum of £ , unto the said (*grantee*) his executors, administrators, or assigns, during the natural life of the said (*grantor*) [or

ANNUITIES.

*Secured on
Copyholds.*

Upon condition
to be void on
due payment of
the annuity.

tenant, *Doe v. Tofield*, 11 East, 246, or devise it, *Davie v. Reversham*, 3 Ch. Rep. 4, he is seldom admitted until some arrears of the annuity are incurred, which, unless by special condition, (*Tredway v. Fotherley*, 2 Vern. 367) cannot be compelled on the part of the lord, *Baspool v. Long*, 1 Roll, b. 6, 568, pl. 6; *King v. Dilliston*, 1 Salk. 386; and see *ante*, Vol. V. p. 281, n. (2).

(1) A condition for vacating the assurance on the due payment of the annuity, and the observance of the other stipulations on the part of the grantor, is usually inserted in the surrender of copyholds, in preference to a trust for re-surrendering the premises, as upon the avoidance of the surrender by performance of the condition, the land will return to the grantor as of his former estate, without the necessity of any re-admission or the payment of a fine; and see *Simonds v. Lawnd*, Cro. Eliz. 239. This condition should also be inserted in the surrender itself, that it may be entered on the court rolls. See *ante*, Vol. V. No. XII. and *ante*, SUPPLEMENT.

Condition.

ANNUITIES.

*Secured on
Copyholds.*

(*grantee*)](1) and up to, and until the day and time of his decease, at or upon the days or times and in the manner hereinbefore appointed for payment of the same, or in case of a repurchase of the said annuity in pursuance of the proviso hereinafter contained in that behalf, then and in either of the said cases, the surrender hereinbefore covenanted to be made, if made, and the estates and interests which shall have been vested in the said (*grantee*) his heirs or assigns (2), by virtue thereof, and if no such surrender shall have been made, then the covenant and agreement hereinbefore contained for making the same, shall respectively upon such decease or repurchase, be and become absolutely void to all intents and purposes whatsoever, and in case the said (*grantee*) his heirs or assigns, shall have been admitted to the said premises, or any part thereof, he and they shall from thenceforth stand seised or possessed of the same IN TRUST for the said (*grantor*) his heirs and assigns, and to surrender and assure the same to him and them accordingly. PROVIDED ALWAYS also, and it is hereby declared and agreed, that in case de-

But in case of
default in pay-
ment of the an-
nuity.

•

Nominees.

(1) If the grant be during the lives of nominees, say,

“ During the natural lives of the said (*nominees*) and the life of the survivor or longest liver of them, and up to and until the day and time of the decease of such survivor.”

Term of years.

(2) If the surrender be made to the use of the grantee for a term of years only, add “ executors and administrators,” instead of “ heirs” to the name of the grantee throughout.

fault shall be made in payment of the said annuity or annual sum of £ at or upon any or either of the days or times hereinbefore appointed for payment thereof, then and in such case, and from thenceforth, he the said (*grantee*) his heirs and assigns, shall stand possessed of, and interested in all and singular the messuages, lands, and hereditaments so hereby covenanted or agreed to be surrendered as aforesaid, UPON THE TRUSTS, and to and for the ends, intents, and purposes following, (that is to say) UPON TRUST that he the said (*grantee*) his heirs and assigns, shall and may, by and out of the rents, issues, and profits thereof, or any part thereof, or by sale or mortgage thereof, or of any part thereof, or by all or any one or more of the said ways and means, or by any other lawful ways and means whatsoever, at his or their discretion, raise and levy such sum and sums of money as shall be or as he or they shall deem sufficient, to pay and satisfy so much of the said annuity or yearly sum of £ , as shall be then due and in arrear, together with all such sum and sums of money, losses, costs, charges, damages, and expenses as shall have been paid, sustained, expended, or occasioned by reason of any such default, or in any insurance or repairs of the said premises, or otherwise in the due execution of all or any of the trusts of these presents; and from and after full payment and satisfaction thereof, in case the same shall be raised or paid by or out of the rents and profits of the said premises, then IN TRUST to permit and suffer, and authorise and em-

ANNUITIES:

Secured on
Copyholds.

In trust by rents
and profits, &c.
to retain an-
nuity.

Surplus in trust
for grantor.

ANNUITIES.

*Secured on
Copyholds,*

In case of sale,
money to be
invested in the
funds, or on
real security.

power him the said (*grantor*) his heirs and assigns, to receive and retain, or otherwise well and truly pay unto him and them, all and every the residue and surplus of the same rents, issues, and profits, to and for his and their own proper use and benefit. But in case the same shall be raised or paid by any sale, mortgage, or other disposition of the said premises, under or by virtue of the trusts aforesaid, then and in such case upon FURTHER TRUST (1) after full payment and satisfaction of the said annuity or yearly sum of £ , and of all such costs, charges, and expenses as aforesaid, that he the said (*grantee*) his heirs, executors, administrators, and assigns, do and shall forthwith invest the residue or surplus of the money which shall arise by any such mortgage, sale, or other disposition of the said premises, in the purchase of three per cent. consolidated other bank or government annuities, or upon real securities in the name of him the said (*grantee*) his heirs, executors, administrators, and assigns, and of one or more person or persons to be by him or them named, upon proper and sufficient trusts, to be delivered in writing under the hands and seals of the said trustees and approved by counsel,

Mortgage.

(1) If the premises are subject to a mortgage, see No. II. p. 41, n. (6).

Prior annuity.

If subject to a former annuity, see *ibid.*

Life of grantee.

If the annuity be during the life of the grantee, add,
“ His executors, administrators, and assigns.”

to secure and keep down all future arrears and other payments to grow or become due for or in respect of the said annuity or yearly sum of £ , and to pay and apply the same from time to time accordingly (1). AND in the mean time and until such declaration shall be duly made and executed, it is hereby declared that the trustees and trustee for the time being of the said funds and securities, shall stand possessed of and interested in the same, upon trust by and out of the dividends, interest, and yearly proceeds thereof, and in case such yearly dividends, interest, dividends, and yearly proceeds shall be insufficient, then by selling and disposing of the principal sum so to be invested, or a sufficient part thereof, and of the funds and securities for the same, to pay unto him the said (*grantee*) his executors, administrators, and assigns, so much of the said annuity or yearly sum of £ , as shall from time to time be in arrear and unpaid, together with all reasonable costs, charges, and expenses incurred or occasioned in respect thereof. AND from and after full payment and satisfaction thereof, then in trust to pay and apply the residue and surplus of the dividends and interest thereof, or of so much thereof as shall not have been sold or disposed of for the purposes aforesaid, unto the said (*grantor*) his executors, ad-

ANNUITIES.

Secured on
Copyholders.

And dividends,
&c. applied in
payment of an-
nuity.

And surplus to
grantor.

(1) If so agreed the surplus may be directed at the request of the grantee to be laid out in the purchase of another annuity, as *ante*, No. II. p. 42. Other annuity.

ANNUITIES.

Secured on
Copyholds.

Cessation of
annuity on
death, &c.

Contracts of
grantee to bind
grantor.

His receipts to
be a discharge.

ministrators and assigns, for his and their own use and benefit. [AND from and after the decease of the said (*grantor*) [*or (grantee)*] (1) or repurchase of the said annuity or yearly sum of £ , and full payment and satisfaction of all such arrears and costs and charges as aforesaid, then upon trust to assign and transfer the said principal money, and the funds or securities upon which the same shall be invested, and surrender and assure the hereditaments and premises chargeable with the payment thereof, or such parts of the said principal money, funds, securities, hereditaments and premises respectively, as shall not have been applied or disposed of for any of the purposes aforesaid, unto him the said (*grantor*) his heirs, executors, administrators, or assigns, to and for his and their own proper use and benefit.] AND it is hereby declared and agreed, by and between the said parties to these presents, and the said (*grantor*) doth hereby expressly declare and agree that all and every the contracts and agreements, and sales, mortgages, leases, acts, deeds, matters, and things whatsoever which shall be made or entered into, and all surrenders, conveyances, and assurances which shall be executed, and all receipts and acquittances for money which shall be given, by the said (*grantee*) his

Nominees.

(1) If the grant be during the lives of nominees, say,

“ From and after the decease of the survivor of them the said (*nominees*).”

heirs, executors, administrators, or assigns, of or concerning the several messuages, lands, tenements, hereditaments, funds, securities, and premises hereby charged with the payment of the said annuity or yearly sum of £ , or intended so to be, shall be good, valid, and efficient, to all intents and purposes whatsoever, in like manner as if the same respectively had been lawfully entered into, made, done, executed, or given by him the said (*grantor*) before the execution of these presents. [AND that no purchaser or purchasers, mortgagee or mortgagees, or other person or persons who shall pay any purchase, mortgage, or other consideration money, or any rents, issues, or proceeds of or for the said premises or any part thereof, to him the said (*grantee*) his executors, administrators, or assigns, in pursuance of the trusts hereinbefore expressed, or any or either of them shall afterwards be obliged to see to the application thereof, or be answerable or accountable for the misapplication or non-application of the same, or be obligated to inquire into the reason or necessity of any such sale, mortgage, or other disposition of the said premises, or any part thereof, being made, or of any other matter or thing relating thereto.] PROVIDED also, and it is hereby further agreed and declared, that the said (*grantee*) his executors, administrators, or assigns, shall not be answerable or accountable for any more or other money than shall actually come to his or their hands, under or by virtue of these presents, nor for any loss or accident which may happen to any such money, or to the said trust estate, or

ANNUITIES.

Secured on
Copyholds.

Purchasers, &c.
not liable to see
to the applica-
tion of the
money.

Grantee not an-
swerable for ac-
cidents.

ANNUITIES.

*Secured on
Copyholds.*

Covenant by
grantor that he
is seised.

premises, or any part thereof, in any wise howsoever, unless the same shall be occasioned by or through his or their wilful or culpable negligence or default, but the same shall be borne and paid solely by the said (*grantor*) his heirs, executors, or administrators (1). AND the said (*grantor*) doth hereby for himself, his heirs, executors, and administrators, covenant, declare, and agree, with and to the said (*grantee*) his heirs, executors, administrators, and assigns, in manner following, that is to say, that he the said (*grantor*) at the time of the sealing and delivery of these presents (2), is lawfully and rightfully seised of or well entitled in his own right and to his own use of all and singular the several messuages, lands, tenements, hereditaments, and premises hereinbefore covenanted or agreed to be surrendered, with their and every of their appurte-

Covenant to
insure.

(1) If the premises charged with the payment of the annuity consist wholly or chiefly of houses or other buildings, it will be proper, unless they have been previously insured, and the policy assigned, as before mentioned, to insert here a covenant to insure them against fire, for the form of which see *ante*, No. IX. pp. 92, 97.

Surrender al-
ready made.

(2) If the surrender have been already or be now to be made of the premises, say,

“At the time of making and perfecting the said surrender so hereinbefore mentioned to have been made as aforesaid, was,” &c. *as above*.

And instead of the word “covenanted” say, “*mentioned to be surrendered*,” throughout, and make the covenants for the title to run in the past time, so as to have reference to the time of the surrender.

Life.

If the grantor be tenant for life only of the premises, see *ante*, Vol. V. No. VIII. notes, and *ante*, No. II. marg. “life” in notes.

nances, as of, in, and for a good, perfect, clear, absolute, and indefeasible estate of inheritance in fee-simple (1) in possession and in severalty, at the will of the lord, according to the custom of the said manor of _____, without any manner of trust, condition, power of revocation, or of limiting or declaring any new or other use or uses, or any other qualification, restriction, matter, or thing whatsoever, which can or may impeach, make void, lessen, incumber, determine or prejudicially affect the same, or any part thereof, in any manner howsoever, save only and except the customary rents and services, payable for or in respect of the same premises. AND also that he the said (*grantor*) now hath in himself, full power and lawful and absolute right and title to charge the same with the payment of the said annuity or annual sum of £ _____, unto the said (*grantee*) his executors, administrators, and assigns, for and during the natural life of the said (*grantor*) [*or (grantee)*] (2) in the manner aforesaid, and according to the true intent and meaning of these presents (3). AND also to surrender the same hereditaments and premises, with the appur-

ANNUITIES.

*Secured on
Copyholds.*

And hath right to charge the premises.

And also to surrender.

(1) If the grantor be tenant in tail or for life only, say, "in tail," or "for his natural life." Tail or life.

A covenant may also be added that the premises are of a clear annual value, as *ante*, No. II. p. 51. Annual value.

(2) If the grant be during the lives of nominees, say, Nominees.

"For and during the natural lives of the said (*nominees*) and the life of the survivor or longest liver of them."

(3) A declaration may be inserted here, if thought requisite, that the fine on change of tenancy does not exceed a certain sum, see *ante*, Vol. V. No. XII. p. 293, n. (1). Fines, &c.

ANNUITIES.

*Secured on
Copyholds.*

That the gran-
tee may quietly
receive the an-
nuity.

tenances, to the use of the said (*grantee*) and his heirs (1), upon the trusts and for the intents and purposes hereinbefore expressed concerning the same. AND likewise, that it shall be lawful for the said (*grantee*) his executors, administrators, and assigns, from time to time and at all times hereafter, for and during the natural life of the said (*grantor*) [*or (grantee)*] (2), to have, hold, receive, take, and enjoy the same annuity or annual sum of £ , and such proportionate part thereof, as aforesaid, from and out of the hereditaments and premises, in such manner as the custom of the said manor will permit, free from all other charges and incumbrances whatsoever, except only the customary rents and service due in respect thereof. AND further that, &c. (*Covenant for quiet enjoyment, further assurance, &c. &c.*) (3). AND, &c. (*Clause of repurchase on repayment of the purchase money, &c.*) (4) adding, AND upon payment of the same, together with such arrears, costs, and expenses as aforesaid, he the said (*grantee*) his heirs, executors, or administrators, shall and will at the request, and the proper costs

Life.

(1) If the grantor be tenant for life only, say,

“ His executors, administrators, and assigns for the said term of years, if he the said (*grantor*) shall so long live.”

Nominees.

(2) If the grant be during the lives of nominees, say,

“ For and during the term of the natural life of the said (*nominees*) and the life of the survivor or longest liver of them.”

Insurance.

(3) See *ante*, No. II. p. 54; and if the annuity be granted during the life of the grantor, add a covenant as to insurance, as *ante*, No. II. p. 59, *et seq.*

(4) See *ante*, No. II. p. 65.

and charges in the law of the said (*grantor*) (1) assign, release, or surrender, or cause to be assigned, released, or surrendered the said annuity or yearly sum of £ , and also all and singular the messuages, lands, tenements, hereditaments, and premises hereby made, or intended to be made chargeable with the payment thereof, or so much and such part thereof as shall not have been disposed of under or by virtue of the trusts of these presents, and transfer all such principal money as shall have been invested in government or other securities, under or by virtue of the same trusts, or so much and such parts thereof as shall not have been applied and disposed of for the like purposes, unto or to the use of the said (*grantor*) his heirs, executors, administrators, or assigns, or such other person or persons as he or they shall direct or appoint, and shall and will deliver up these presents, and the hereinbefore in part recited bond and warrant of attorney (unless the same shall have been filed,) and all other securities given for the said annuity or yearly sum, unto him or them to be cancelled, or otherwise disposed of at his or their pleasure; and acknowledge, or cause to be acknowledged, satisfaction on the record of any judgment which may have been entered up by virtue of the said warrant of at-

ANNUITIES.

 Secured on
Copyholds.

(1) If the annuity be granted during the life of the grantee, Life of grantee, or the lives of nominees, add,

“ His executors and administrators.”

ANNUITIES.

*Secured on
Copyholds.*

torney, and also satisfaction or vacation of the surrender hereinbefore agreed or covenanted to be made, to be entered upon the court rolls of the said manor of _____, and do and cause to be done every or any other act, deed, matter, or thing whatsoever, which shall be deemed necessary, expedient, or advisable in or concerning the premises, as he the said (*grantor*) his heirs or assigns, or his or their counsel in the law, being of the degree of a barrister, shall reasonably advise and require, [so as for the doing thereof the said (*grantee*) his heirs, executors, administrators, or assigns, be not compelled or compellable to go from his or their then place or respective places of abode, without a reasonable and sufficient sum being previously paid, tendered, or secured to him, her, or them, for or in respect of his, her, or their time, trouble, and expenses (1)]. IN WITNESS, &c.

Receiver.

(1) If a receiver be appointed for the purpose of keeping down the annuity, insert such appointment here as in the form given, *ante*, No. II. p. 99.

Title deeds.

If any of the title deeds are not delivered over, see *ante*, No. II. p. 116, and *post*, 183.

Provisos, &c.

See various provisos, &c. to be added where circumstances may require it, *ante*, No. II. p. 87, *et seq.*

ANNUITIES.*Secured on
Copyholds.**Memorandum of Surrender taken in Court, to be
engrossed on the Court Rolls.**Variations where it is taken out of Court.*

Manor of } **BE IT REMEMBERED, that at a court** *Surrender.*
 } holden in and for the said manor of
 this day of in the year of our
 Lord came (*the grantor*) of, &c.
 one of the copyhold or customary tenants of the
 said manor, in his own proper person (1), and for
 and in consideration of the sum of £ of
 lawful and current money of that part of the
 United Kingdom of Great Britain and Ireland
 called England, to the said (*grantor*) in hand well
 and truly paid by the said (*grantee*) (*or as the
 case may be*) (2) (being the same sum of £
 as is mentioned in a certain bond or obligation
 hereinafter referred to) as and for the purchase of
 an annuity, or clear annual sum of £ during

(1) If the surrender be made by attorney, say,

*Surrender by
attorney.*

“ By A. B. his attorney duly appointed by a certain deed
 poll under the hand and seal of the said (*grantor*) bearing
 date the day of which was produced and
 read.”

(2) If the consideration be other than in money paid at the *Consideration.*
 time of the surrender, see No. II. p. 75, *et seq.*

ANNUITIES. the term of the natural life of the (*grantor*) [*or* (*grantee*) (1)] surrendered into the hands of the lord by the rod, (*or as the custom of the manor may be*) by the personal acceptance of the said lord, [*or by the personal acceptance of* , steward of the said manor,] according to the custom of the said manor (2), ALL that copyhold messuage, &c. and of which he the said (*grantor*) at the time of making the said surrender was seised in fee at the will of the lord, according to the custom of the said manor, with all and singular the appurtenances to the same belonging; and all the estate, right, title, interest, use, trust, benefit, claim, and demand whatsoever, of him the said (*grantor*) in, to, or concerning the said premises, or any part thereof, and which said surrender it is hereby declared and agreed was made and is intended to enure to and for the use and behoof of the said (*grantee*) his heirs and assigns for ever, to be holden at the will of the lord according to the custom of the said manor, by the rents and services thereof due and of right accustomed, UPON CON-

Secured on Copyholds.

Condition.

Nominees. (1) If the annuity be granted during the lives of nominees, say,

“ During the natural lives of the said (*nominees*) and the life of the survivor or longest liver of them.”

Surrender taken out of court.

(2) If the surrender were taken out of court, say,

“ By the said and two other copyhold or customary tenants of the said manor, according to the custom of the said manor.”

DITION nevertheless, that if the said (*grantor*) his heirs, executors, or administrators, shall and do well and truly pay, or cause to be paid, the said annuity, or clear annual sum of £ unto the said (*grantee*) his executors, administrators, or assigns, by even quarterly payments on the day of , the day of , the day of , and the day of , in each and every year during the natural life of the said (*grantor*) [*or (grantee)*] (1) and up to the day or time of his decease, (being the same days or times as are mentioned for payment thereof in a certain indenture bearing date the day of and made or expressed to be made between the said (*grantor*) of the one part, and the said (*grantee*) of the other part, and in the condition of a certain bond or obligation and defeasance of a certain warrant of attorney respectively under the hand and seal of the said (*grantor*) bearing even date therewith,) or in case the said annuity or yearly sum shall be repurchased, or otherwise extinguished, according to the purport and effect, and true intent and meaning of the same indenture, then the said surrender shall be void and of no effect, but otherwise the same shall be and remain

ANNUITIES.

*Secured on
Copyholds.*

(1) If the grant be during the lives of nominees, say,

Nominees.

“ During the natural lives of the said (*nominees*) and the life of the survivor or longest liver of them, and up to the day or time of the decease of such survivor.”

ANNUITIES. to the use of the said (*grantee*) his heirs and assigns for ever, according to the custom of the said manor as aforesaid.

*Secured on
Copyholds.*

Taken, &c. (1).

Surrender
taken out of
court.

(1) If the surrender were taken out of court, say,
“ Before and two other copyhold or customary tenants of the said manor, at the house of called or known by the sign of situated at within the aforesaid manor.”

Stamp.

. On the grant of an annuity secured on copyhold premises, the surrender and not the deed of grant is to be deemed the principal assurance, and to be impressed with the *ad valorem* stamp. See *ante*, INTRODUCTION.

Entry on court
rolls.

The purport of the surrender should be entered on the court rolls; see 1 Watk. Cop. 116, and *ante*, INTRODUCTION.

ANNUITIES.

Secured on
Leaseholds.

No. VII.

Grant of an Annuity secured upon Leasehold Property during the Life of the Grantor.

Variations where it is during the Life of the Grantee or the Lives of Nominees.

Where the Estate is in Mortgage.

Where it is subject to a former Annuity, &c. &c.

Where secured on Lease for Years determinable on Lives, &c. &c. as in Margin below (1).

THIS INDENTURE, of parts, made the
day of [*in the year of the reign,
&c. and] in the year of our Lord . BE- Parties.
TWEEN (*the grantor*) of, &c. of the first
part, (*the grantee*) of, &c. of the second
part, and (*a trustee*) (2) of, &c. (a trustee
named and appointed by and on the part of the

(1) See also notes and variations, *ante*, No. II., and Vol. III. Notes, &c. No. LXX. p. 128, *et seq.*, and Vol. V. "*Mortgage of Leaseholds*."

* Where brevity is particularly desired, the parts within Brevity.
brackets may be omitted throughout the precedent.

(2) A trustee may, in most cases, be omitted, and the pre- Trustee.
mises assigned to the grantee himself; see *ante*, INTRODUCTION.

ANNUITIES.

*Secured on
Leaseholds.*

Recital of
lease.

Of contract for
purchase of
annuity.

said (*grantee*) for the purposes hereinafter expressed of the third part. WHEREAS by an indenture of demise or lease, bearing date on or about the day of which was in the year , and made or expressed to be made between A. B. (*the lessor of the premises*) of the one part, and the said (*grantor*) of the other part, the said A. B. [for good and sufficient considerations therein mentioned,] demised and leased unto the said (*grantor*) his executors, administrators, and assigns, ALL, &c. (1), To HOLD the same with the appurtenances unto the said (*grantor*) his executors, administrators, and assigns, from the day of then last past, for the term of years, to be thence next ensuing, under and subject to the clear yearly rent of £ and the several covenants, provisos, and agreements therein contained, which on the part of the said (*grantor*) his executors, administrators, and assigns, is and are thereby required to be paid, performed, or observed respectively (2). AND WHEREAS the said (*grantee*) hath agreed with the said (*grantor*) for the purchase of an annuity, or clear yearly sum of £ during the life of the (*grantor*) [*or*

Parcels.

(1) Insert here an exact description of the premises from the lease, and see *ante*, Vol. III. p. 136, n. (2), or Vol. V. p. 314, n. (2).

Grantor an
assignee.

(2) If the grantor be an assignee of the premises, recite here the assignment to him, as in Vol. III. No. LXX. p. 131, n. (1).

Prior agree-
ment.

If the annuity be granted in pursuance of a prior agreement in writing, recite such agreement as in No. II. p. 13, n. (†).

(*grantee*) (1) (*or as the case may be*)] subject only **ANNUITIES.**
 to the power of repurchase hereinafter contained,
 at or for the price or sum of £ . AND
 WHEREAS it has been agreed that the same should
 be secured by the {bond or obligation of the said
 (*grantor*) and a} warrant of attorney to confess
 judgment thereon (2), and also made chargeable
 upon and issuable out of, or otherwise secured by
 the messuages or tenements and premises com-
 prised in the said in part recited indenture, and
 that the same messuages or tenements and pre-
 mises should for that purpose be assigned to the said
 (*trustee*) upon the trusts hereinafter expressed (3).
 {AND WHEREAS in pursuance of the said agree- **Recital of bond.**
 ment the said (*grantor*) by his bond or obligation
 in writing, bearing even date herewith, hath be-
 come bounden for himself and his heirs to the said
 (*grantee*) his executors, administrators, and as-
 signs, in the penal sum of £ with a con-

(1) If the annuity be intended to be granted during the lives **Nominees.**
 of nominees, say,

“For the joint lives of (*the nominees*) of, &c. and the
 life of the survivor or longest liver of them.”

(2) If a warrant of attorney only is to be given, say,

“By a judgment to be confessed and entered up against
 the said (*grantor*) for the sum of £ in pursuance of
 a warrant of attorney to be given by him for that purpose.”

**Warrant of
 attorney only.**

(3) If there be a surety for the grantor, see No. II. p. 16, **Surety.**
 n. (12).

If the licence of the lessor be requisite to an assignment of **Licence.**
 the premises, recite the same having been obtained, as *ante*,
 Vol. V. p. 315, notes.

ANNUITIES.

Secured on
Leasholds.

And warrant of
attorney.

Witness, that
in consideration
of the money
paid.

dition thereunder written, for making void the same on payment of the said annuity, or yearly sum of £ , on the days, at the times, and in the manner therein and hereinafter particularly mentioned.} AND hath also executed a warrant of attorney bearing even date with the same bond, empowering certain attornies therein named to confess judgment against him in an action of debt {on the said bond (1)} in the court of at Westminster, in or as of term next, or of any subsequent term, together with costs of suit. Now THIS INDENTURE WITNESSETH, that in further pursuance and performance of the said agreement, and in consideration of the sum of £ (2) of lawful and current money of that part of the United Kingdom of Great Britain and Ireland called England, to the said (*grantor*) in hand well and truly paid by the said (*grantee*) (*or otherwise as the case may be*) at or immediately before the sealing and delivery of these presents, the receipt of which said sum of £ [and that the same is in full for the purchase of the annuity, or yearly sum of £ intended to be hereby granted or secured] the said (*grantor*) doth hereby acknow-

Warrant of
attorney only.

(1) If there be no bond given, say,
“For money had and received at the suit of the said (*grantee*).”

And see *ante*, No. II. p. 14, n. (8), p. 16, n. (13).

Consideration.

(2) If the consideration be paid otherwise than in money, see No. II. p. 75, *et seq.*

ledge, [and of and from the same, and every part thereof, doth acquit, release, and exonerate, and for ever discharge the said (*grantee*) his executors, administrators, and assigns, by these presents,] He the said (*grantor*) HATH given, granted, bargained, and sold, and by these presents DOTN for himself, his heirs, executors, and administrators, give, grant, bargain, sell, and confirm unto [and to and for the use and benefit of] the said (*grantee*) his executors, administrators, and assigns (1), one clear annuity, or yearly sum of £ of lawful and current money of that part of the United Kingdom of Great Britain and Ireland called England, to be issuing and payable out of and from, and charged and chargeable upon ALL and singular the messuages or tenements, piece or parcel of land, and other the premises comprised in the said hereinbefore in part recited indenture of lease, [and assignment]. TO HAVE AND TO HOLD, receive, perceive, take, and enjoy the said annuity, or yearly sum of £ hereby granted or secured, or intended so to be, unto and by him the said (*grantee*) from the date

ANNUITIES.

Secured on
Leaseholds.The grantor
grants, &c. the
annuity.To hold during
the life of the
grantor.

(1) If the annuity be for the life of the grantee, say "and his assigns," instead of "executors, administrators, and assigns," throughout.

Life of grantee.

If the annuity be granted to two or more persons as tenants in common, see No. II. p. 21, n. (24).

Tenants in
common.

If for a term of years determinable on lives, see No. II. p. 22, in *notis*.

Years deter-
minable on
lives.

If the grantee is not the person to be beneficially interested in the annuity, say,

Grantee not be-
neficially inte-
rested.

"For the use and benefit of A. B. of, &c."

ANNUITIES.

*Secured on
Leaseholds.*

When and
where payable.

of these presents, for and during the term of the natural life of the said (*grantor*) [*or (grantee)*] and up to the day of his or her decease (1), and to be paid and payable at or in the common dining-hall of the Inner Temple, London, (or other place where the same shall be lawfully demanded) by four equal quarterly payments, between the hours of ten and twelve of the clock in the forenoon of the several days and times next hereinafter mentioned (that is to say) the day of , the day of , the day of , and the day of in every year, and also a due proportion thereof on demand, in respect of any period which shall happen to elapse between either of the said days of payment and the day of the decease of the said (*grantor*) [*or (grantee)*] (2), (being the same days or times as are mentioned for that purpose in the condition and defeasance of the hereinbefore in part recited bond and warrant of attorney respectively) every of which said payments is to be made clear of all deductions and abate-

Nominees.

(1) If the annuity be granted during the lives of nominees, say,

“ For and during the term of the natural lives of the said (*nominees*) and the life of the survivor or longest liver of them, and up to the day of the decease of such survivor.”

Years deter-
minable on
lives.

If the annuity be granted for a term of years determinable on lives, see No. II. p. 22, notes.

Nominees.

(2) If the grant be during the lives of nominees, say,

“ Next preceding the decease of the survivor or longest liver of them the said (*nominees*).”

ments whatsoever (1), [save only and except property or income tax, if any, for the time being] and the first payment to be made on the day of now next ensuing, if he the said (*grantor*) [or (*grantee*)] (2) shall be then living, or if dead, then a proportionable part thereof immediately upon his decease. AND the said (*grantor*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, grant, and agree with and to the said (*grantee*) his executors, administrators, and assigns, in the manner following, (that is to say) that he the said (*grantor*) his heirs, executors, or administrators, shall and will from time to time, and at all times hereafter, during the natural life of him the said (*grantor*) [or (*grantee*)] (3) well and truly pay, or cause to be paid unto the said (*grantee*) his executors, administrators, and assigns, the said annuity or clear yearly sum of £ at and upon the times and days, and in the manner hereinbefore appointed for payment thereof, and according to the true intent and

ANNUITIES.

*Secured on
Leaseholds.*

Covenant for
payment of the
annuity.

(1) Or more fully as *ante*, p. 191.

Full form.

(2) If the annuity be granted during the lives of nominees, say, Nominees.

“If they the said (*nominees*) or any or either of them, shall be then living, or if not, then a due proportionable part thereof, immediately upon the decease of the survivor or longest liver of them, up to the day of his or her decease.”

(3) If the annuity be granted during the lives of nominees, say, Nominees.

“During the joint natural lives of them the said (*nominees*) and the life of the survivor or longest liver of them.”

ANNUITIES.

*Secured on
Leaseholds.*

Power of distress if annuity in arrear twenty one days.

meaning of these presents. AND also (1) that in case the said annuity, or yearly sum of £ or any part thereof, shall happen to be in arrear and unpaid for the space of twenty-one days next after any or either of the days or times whereupon the same is hereinbefore made payable, (being lawfully demanded) then and from time to time, as often as the same shall happen, it shall be lawful for the said (*grantee*) his executors, administrators, and assigns, or his or their lawful attorney or attornies, to enter into and upon all and singular the messuages or tenements and premises hereby charged or chargeable with the payment thereof, and to distrain for the same, and in due time after such distress or distresses shall be made or taken (unless all arrears of the said annuity, and all expenses and reasonable charges incurred by reason thereof, shall be sooner paid or satisfied) to cause the same to be appraised and sold, or otherwise disposed of, as in case of distress made for rent in arrear between landlord and tenant, [to the end and intent that the said annuity, or yearly sum, and all costs, damages, and expenses occasioned by such default as aforesaid, may thereby or otherwise be fully paid or satisfied]. AND

Distress.

(1) As a rent made to issue out of a chattel is not properly such, but a personal annuity only, a power is, in this case, requisite to authorise a distress, although not in the case of freeholds (see *ante*, p. 25, n. (33)); because the grantor not having a reversion in him, it is not within the 4 Geo. II. c. 28, sec. 5, as observed by the court in — *v. Cooper*, 2 Wils. 375, “there is no such thing as a rent charge, rent seck, or rent service issuing out of a term of years.” And see *ante*, Vol. V. p. 320, n. (1).

FURTHER, that in case the said annuity, or yearly sum of £ or any part thereof, shall at any time be in arrear and unpaid for the space of forty days next after any of the days or times hereby appointed for payment thereof, then and in such case, and from time to time as often as the same shall happen, it shall be lawful for the said (*grantee*) his executors, administrators, and assigns, (although no demand shall have been made of the said arrears, or of any part thereof) to enter into and upon all and singular the same messuages or tenements and premises (or into or upon any part or parcel thereof, in the name of the whole) and to hold and keep the same, and receive and retain the rents, issues, and growing proceeds thereof, for his and their own use and benefit, until thereby or otherwise all arrears of the same annuity or yearly sum, whether due before, or become due subsequently to such entry, together with all such costs, charges, damages, and expenses whatsoever, which shall have been occasioned by reason of such default, shall be fully paid or satisfied, every which entry, when made, shall be without impeachment of or for any manner of waste, other than wilful and malicious waste (1). AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance and performance of the aforesaid agreement, [and in consideration of the sum of ten shillings of lawful current money of England, to the said (*grantor*) in hand well and truly paid by the

ANNUITIES.

Secured on
Leaseholds.

Power of entry
in case of de-
fault for forty
days.

FURTHER
WITNESS,
that for better
securing the
annuity,

(1) If it be agreed that the annuity shall be reduced on punctual payment, see *ante*, p. 87, (C).

Reduction of
annuity.

ANNUITIES.

Secured on
Leaseholds.

the grantor
assigns.

Parcels.

said (*trustee*) [*or (grantee)*] at or before the execution of these presents, the receipt whereof is hereby acknowledged,] He the said (*grantor*) at the request and nomination of the said (*grantee*) testified by his being a party to, and signing and sealing these presents (1), HATH bargained, sold, assigned, transferred, and set over, and by these presents DOTH bargain, sell, assign, transfer, set over, and confirm unto the said (*trustee*) [*or (grantee)*] his executors, administrators, and assigns, ALL those the several messuages or tenements, pieces or parcel of ground, and all and singular other the premises comprised in and expressed to be demised by the hereinbefore in part recited indenture of lease, of the day of [and indenture of assignment of, &c.] as hereinbefore is mentioned, with all and every the rights, members, easements, privileges, advantages, and appurtenances to the same premises belonging, or therewith or with any part thereof, now or usually occupied or enjoyed, AND all the estate, right, title, interest, term, or number of years, now to come and unexpired, possession, [benefit of renewal,] property, claim, and demand whatsoever, both at law and in equity, of him the said (*grantor*) of, in, or to the same premises, or any part or parcel thereof, under or by

Licence.

(1) If the grantor be restricted from assigning without licence, see *ante*, Vol. III. No. LXX. p. 129, n. (1), and 132, *in notis*; 135, n. (2), and add,

“By and with the licence and consent of the said (*grantor*) duly given and testified [as aforesaid.]”

virtue of the said indenture [*or* indentures, or of either of them,] or otherwise howsoever; together with the said in part recited indenture [*or* indentures,] and all [*other*] assignments and underleases, if any, thereof. To HAVE AND TO HOLD the said messuages or tenements, piece or parcel of ground, and all and singular other the premises hereby assigned, or otherwise assured, or intended so to be, with their and every of their respective rights, members, easements, advantages, and appurtenances, unto and by him the said (*trustee*) [*or* (*grantee*)] his executors, administrators, and assigns, from henceforth for and during all the rest, residue, and remainder of the said term of years, in and by the said in part recited indenture of lease granted, which is or may be yet to come and unexpired by efflux and computation of time [wanting one day only of the said term (1).] But nevertheless upon the trusts, and to and for the ends, intents, and purposes, and under and subject to the provisos, declarations, and agreements hereinafter declared or expressed concerning the same (2), that is to say, UPON TRUST, to permit and suffer the said (*grantor*) his executors,

ANNUITIES.

Secured on
Leaseholds.

To hold to the
trustee for the
residue of the
term,

upon trust to
permit the
grantor to take
the rents, &c.
till default in
payment.

(1) See *ante*, p. 222, n. (1), and Vol. V. p. 220, n. (1.)

(2) If the premises consist principally of houses or other buildings, the grantor should insure previously to the execution of the deed, and assign the policy; for the form of such an assignment, see *ante*, p. 92, rider (D); or covenant to insure, as *ante*, p. 97, rider (E); see also Vol. V. p. 98.

ANNUITIES.

*Secured on
Leaseholds.*

Then upon trust
out of the rents
and profits, to
pay annuity.

administrators, and assigns, to receive and take the yearly and other rents, issues, and profits of all and singular the same premises, to and for his and their own proper use and benefit, until some default shall happen to be made in payment of the said annuity or yearly sum of £ at or upon the days or times, or in the manner hereinbefore appointed for payment thereof. AND from and immediately, or at any time after any such default shall be made, and from time to time as often as the same shall happen, (and of which default any notice or declaration in writing of or by the said (*trustee*) or of the said (*grantee*) or of either of their executors, administrators, or assigns, shall be deemed sufficient evidence) then UPON TRUST that he the said (*trustee*) [*or (grantee)*] his executors, administrators, or assigns, do and shall by and out of the annual and other rents, issues, and profits of the said messuages, or tenements and premises, and by bringing actions against the tenants for the time being thereof, or by making entries thereupon, or by any other lawful ways and means whatsoever, pay and satisfy (1) unto the said (*grantee*) his executors, administrators, and assigns, so much of the said annuity or yearly sum as shall be then in arrear, and all costs, charges, and expenses which shall have been in-

Prior mortgage,
&c.

(1) If the premises be subject to a mortgage or a former annuity, see No. II. p. 35, n. (50), 37, n. (54), 41, n. (56.)

curred or occasioned by any default in payment thereof, or otherwise in relation thereunto, and also all arrears of rent, if any, reserved or payable for the said premises or any part thereof, to any prior or superior landlord or landlords thereof, and also all such sum and sums of money as shall be necessary for putting the same or any part thereof in good and tenantable repair, or for insuring the same against loss by fire, and pay, apply, and dispose of the surplus or residue thereof unto the said (*grantor*) his executors, administrators, and assigns, or as he or they shall direct. AND the said (*grantor*) doth hereby direct all and every the tenants for the time being of the said premises, to pay to the said (*trustee*) [*or (grantee)*] his executors, administrators, appointees, or assigns, so much of the yearly or other rent or rents thereof as shall be by him or them demanded, and doth hereby declare that his or their receipt and receipts, for any such rent or rents, shall from time to time be as good and effectual discharge to the person or persons paying the same. AND UPON FURTHER TRUST that in case the said annuity or yearly sum of £ or any part thereof, shall be in arrear and unpaid for the space of sixty days next after either of the days or times hereinbefore appointed for payment thereof, then and in such case, and so often as the same shall happen, (although no previous demand thereof shall have been made) that he the said (*trustee*) [*or (grantee)*] his executors, administrators, and assigns, shall and do by demising or leasing the

ANNUITIES.

 Secured on
Leaseholds.

And pay surplus to grantor.

Direction to
tenants to pay
rents to trustee.If annuity in
arrear 60 days,
by sale, &c. to
pay arrears.

ANNUITIES.

*Secured on
Leaseholds.*

And invest the
surplus in the
funds, or on
real security.

said premises or any part thereof, for any term or number of years (not exceeding the then residue of the said term of years) at a pepper-corn or other rent, and at or for any premium or consideration in money, or without, or by mortgaging, or by absolute sale or other disposition of the said messuages, or tenements and premises, or any part thereof, either by public sale or private contract, [and by executing all necessary and proper deeds and assurances requisite for the purpose of carrying the same into effect, or by all and every one or more of the said ways and means, or by any other lawful ways or means whatsoever, at his or their discretion] raise and obtain such sum and sums of money as he or they shall think fit, for the purpose of paying and satisfying all arrears of the said annuity or yearly sum, and also all arrears of rent and taxes, if any, then due, or which he or they shall have paid for or in respect of the said premises, or for any such repairs or insurances as aforesaid, together with all costs, charges, damages, and expenses incurred by reason of the non-payment of the said annuity, or in or for answering or performing all or any of the trusts or purposes of these presents. AND from and after full payment or satisfaction of all and singular the sum and sums, costs, charges, damages, expenses, and trusts and purposes aforesaid, UPON TRUST (1)

Mortgage.

(1) If the premises are subject to a mortgage, see No. II. p. 41, n. (56.)

Prior annuity.

If subject to a former annuity, see *ib.*

that he the said (*trustee*) [*or (grantee)*] his executors, administrators, or assigns, shall and do forthwith invest the residue or surplus of the money which shall arise by any such mortgage, sale, disposition, or means aforesaid, in the purchase of bank annuities, or upon government securities, in the joint names of the said (*trustee*) and of the said (*grantee*) or their respective executors, administrators, or assigns, or otherwise pay and dispose of the same as he the said (*grantee*) {his executors, administrators,} or assigns, shall in writing under his or their hand or hands lawfully direct; But nevertheless, UPON TRUST by and out of the dividends, interest, and yearly proceeds thereof, if sufficient, but if not, then by selling and disposing of the principal sum so to be invested, or a sufficient part thereof, and of the funds and securities thereof, to pay unto him the said (*grantee*) his executors, administrators, and assigns, the said annuity or yearly sum of £ as and when the same shall become due and payable, or so much thereof as shall from time to time be in arrear, together with all reasonable costs, charges, and expenses thereby to be incurred or occasioned. AND from and after full payment and satisfaction thereof, and answering other the trusts and purposes of these presents, then UPON TRUST to pay and apply the residue and surplus of the said dividends, interest, proceeds, and monies, unto the said (*grantor*) his executors, administrators, and assigns, for his and

ANNUITIES.

*Secured on
Leaseholds.*

And surplus to grantor, or invest it in purchase of another annuity.

ANNUITIES.

*Secured on
Leaseholds.*

Contracts, &c.
of trustee to
bind grantor.

their own use and benefit, OR UPON THIS OTHER OR FURTHER TRUST, that he the said (*trustee*) his executors, administrators, or assigns, do and shall, if requested by the said (*grantee*) his executors, administrators, or assigns, lay out the money which shall be raised by any of the means hereinbefore mentioned, or any part thereof, in the purchase of an annuity or yearly sum of £ to be payable unto the said (*grantee*) his executors, administrators, and assigns, during the life of the said (*grantor*) [*or (grantee)*] (1) in or from any public assurance office in the cities of London or Westminster, in the room or stead of the said annuity or yearly sum of £ hereby granted. AND it is hereby agreed and declared by and between the said parties to these presents, that all and every the contracts and agreements, and sales, mortgages, dispositions, conveyances, assurances, acts, deeds, matters, and things whatsoever, which shall be entered into, made, done, or executed by the said (*trustee*) [*or (grantee)*] his executors, administrators, or assigns, of or concerning the premises hereby assigned, or intended so to be, or any part thereof, or otherwise in the execution of

Nominees.

(1) If the annuity be granted during the lives of nominees, say,

“ The lives of them the said (*nominees*) and the life of the survivor or longest liver of them.”

or relating to the trusts or purposes of these presents, shall be good, valid, and efficient to all intents and purposes whatsoever, [in like manner as if the same had been entered into, made, done, or executed by him the said (*grantor*) his executors or administrators, before these presents had been made.] AND that the receipt and receipts of the said (*trustee*) [*or* (*grantee*)] his executors, administrators, or assigns, shall from time to time and at all times be a good and sufficient discharge, and good and sufficient discharges to every lessee, purchaser, or mortgagee of the said premises, or other person or persons to whom any of the monies or securities to arise under or by virtue of these presents shall be paid or transferred, and to his, her, and their respective executors, administrators, and assigns, [who or any of whom shall not afterwards be obliged to see to the application thereof, or be answerable or accountable for the misapplication or non-application thereof, or be obligated to inquire into the reason or necessity of or for any demise, sale, mortgage, or other disposition of the said premises, monies, or securities, or any part thereof, or whether the said annuity or yearly sum expressed to be hereby granted or secured, or any part thereof, was at the time of such sale, mortgage, disposition, or payment, in arrear or not, nor obliged to attend to any notice or information of the same not being in arrear, or forbidding any sale or disposition of the said premises, or any part thereof.] AND the said (*grantor*)

ANNUITIES.

Secured on
Leaseholds.

Receipt of trustee a sufficient
discharge.Covenant that
lease is valid.

ANNUITIES. for himself, his heirs, executors, and administrators, doth hereby further covenant, declare, and agree, with and to the said (*grantee*) and also with and to the said (*trustee*) and their respective executors, administrators, and assigns, in the manner following, (that is to say) That the said hereinbefore in part recited indenture of lease mentioned to bear date the day of , is [or and of assignment of, &c. are] at the time of the sealing and delivery of these presents, a good, valid, effectual, and perfect lease, [both at law and in equity, of and for the premises thereby expressed to be demised, and hereby assigned, or mentioned or intended so to be] and that the same and the term of years therein mentioned to be granted, is in full effect, and in no wise forfeited, surrendered, assigned, determined, or prejudicially affected in any manner howsoever. **AND FURTHER** that he the said (*grantor*) now hath in himself full power and absolute right and title to charge the messuages, or tenements and premises, comprised in the said indenture, with the payment of the said annuity or yearly sum of £ , and also to assign the same premises upon and for the trusts and purposes and in the manner aforesaid, and according to the true intent and meaning of these presents. **AND** that he the said (*grantor*) his executors, administrators, or assigns, shall and will from time to time and at all times hereafter during the residue of the said term of years hereby assigned,

*Secured on
Leaseholds.*

That the grantor
hath right to
charge the pre-
mises.

Grantor will
pay rent, &c.

and the subsistence of the said annuity or yearly sum of £ , (except only during such portion of the said term as the said (*trustee*) [*or (grantee)*] his executors, administrators, or assigns, shall or may be in the actual possession of the said premises, under or by virtue of these presents) well and truly pay or cause to be paid, all and every the rent and rents, and other sum and sums of money, in or by the said in part recited indenture of lease reserved or made payable, and all and all manner of taxes, rates, assessments, and other deductions incident to or payable for or in respect of the premises therein comprised, or any part thereof. AND also well and truly observe, perform, and keep, or cause to be observed, performed, and kept (except only during such period of the said term as last aforesaid) all and singular the covenants, provisos, clauses, and agreements, in the same indenture of lease contained, which on the lessee's or tenant's part are or ought to be observed and performed. [AND shall and will from time to time and at all times protect, save harmless, and keep indemnified the said (*grantee*) and (*trustee*) and each of them, their, and each of their executors, administrators, and assigns, from and against the same (1).] AND FURTHER that

ANNUITIES.

 Secured on
Leaseholds.

And perform
covenants.And indemnify
grantee.Quiet enjoy-
ment.

(1) If the premises chargeable with the payment of the annuity consist wholly or chiefly of houses or other buildings, it will be proper, unless they have been previously insured, and the policy assigned as hereinbefore mentioned, to insert here a covenant to insure them against fire, for the form of which see *ante*, p. 97, rider (E).

Insurance
against fire.

ANNUITIES.

Secured on
Leaseholds.

Free from
incumbrances.

from and after any default shall be made in payment of the said annuity or yearly sum of £
contrary to the purport or true intent and meaning of these presents, it shall be lawful for the said (*grantee*) and (*trustee*) respectively, and their respective executors, administrators, and assigns, and [for every mortgagee, purchaser, or other person or persons to whom the messuages, or tenements and premises hereby assigned, or any part thereof, shall be conveyed or assured, in pursuance or by virtue of the trusts hereof, or of any of them, and his and their executors, administrators, and assigns,] peaceably and quietly to enter into and upon, and have, hold, occupy, possess, and enjoy all and singular the same premises, with their appurtenances, and receive and take the rents, issues, and profits thereof, without any manner of trouble, hindrance, interruption, or disturbance whatsoever, of or from, or by the said (*grantor*) his executors, administrators, or assigns, or any other person or persons whomsoever. AND that free and clear, and freely and clearly and absolutely acquitted, exonerated, and discharged, or otherwise by and at the expense of the said (*grantor*) his executors, administrators, and assigns, well and effectually protected, defended, kept harmless, and indemnified from, and against all former and other gifts, grants, mortgages, conveyances, assurances, assignments, rents, arrears of rents, statutes, judgments, recognizances, estates, rights, titles, charges, liens, and incumbrances whatsoever, [and of and from all forfeitures and re-

entries, and cause of forfeiture, or re-entry, whether for breach or non-performance or non-observance of any condition, proviso, covenant, or agreement, or other cause, matter, or thing whatsoever (1).] AND moreover, that he the said (*grantor*) {his executors and administrators,} and all and every person and persons whomsoever, lawfully claiming or possessing any estate, right, title, trust, or interest whatsoever, of, in, to, or out of the messuages or tenements, piece or parcel of ground, and premises hereby assigned, or otherwise assured, or intended so to be, or any part thereof, shall and will at all or any time or times hereafter, upon the reasonable request of the said (*grantee*) his executors, administrators, or assigns, but at the proper costs and charges of him the said (*grantor*) his executors or administrators, make, do, execute, and perfect [or cause and procure to be made, done, executed, and perfected, and join and concur in] all and every, or any such further or other lawful and reasonable acts, deeds, assignments, conveyances, and assurances, matters, and things whatsoever, for the further and better or more satisfactorily granting or securing the said annuity or yearly sum of £ , hereby granted or secured, or intended so to be, unto the said (*grantee*) his executors, administrators, and

ANNUITIES.

*Secured on
Leaseholds.*

Further as-
surance.

(1) If the premises are subject to subsisting incumbrances, *Prior incumbrances.*
add,

“Save only and except as hereinbefore is recited or otherwise mentioned or referred to.”

ANNUITIES.

*Secured on
Leaseholds.*

assigns, and for assigning, confirming, and assuring the messuages or tenements and premises expressed and intended to be hereby assigned, or any part thereof, unto the said (*trustee*) [*or (grantee)*] his executors, administrators, and assigns, upon or for the trusts, intents, and purposes hereinbefore declared or expressed concerning the same, [or unto any purchaser or purchasers, mortgagee or mortgagees, or other person or persons whomsoever, his, her, or their executors, administrators, or assigns,] in such manner and form as he the said (*grantee*) his executors, administrators, or assigns, or any such purchaser, mortgagee, or other person or persons aforesaid, his or their executors, administrators, or assigns, or his, their, or any or either of their counsel in the law, being of the degree of a barrister, shall reasonably require or advise (1). AND (2) moreover that he the said (*grantor*) shall and will at any time or

Covenant by grantor to appear at insurance office.

Renewal.

(1) If the grantor's interest is for years determinable on lives, add covenant as to renewal, as *post*, rider (A).

If a life annuity secured on leasehold, the arrear is a charge on the renewed term generally, and grantee is not bound to contribute towards any expenses of renewal; *Maxwell v. Ashe*, 1 Bro. Ch. Ca. 444; *Moody v. Matthews*, 7 Ves. 174. 183.

Policy.

If the premises are insured for a term, the policy may be assigned here, as *ante*, p. 92, rider (D).

Running lease.

If the lease be determinable on notice before the natural expiration of the term, add a covenant by the grantor that he will not determine it, as *ante*, Vol. V. p. 325, n. (2).

Grantee or nominees.

(2) If the annuity be granted for the life or lives of the grantee or of nominees, the covenant is to be omitted.

Trustee's indemnity.

If the assignment be to a trustee, add here the usual clause for his indemnity, as *ante*, p. 159.

times hereafter, during the subsistence of the said ANNUITIES.
annuity or yearly sum of £ at the request of
the said (*grantee*) his executors, administrators,
or assigns, and upon having reasonable notice
given to him thereof, appear in person at any
office or offices of insurance within the cities of
London or Westminster, or send or cause to be
sent, to any such office or offices, notice in writing
of his place of abode, together with a certificate,
or other satisfactory document or documents, of
the state of his health, in order that he the said
(*grantee*) his executors, administrators, or assigns,
may insure any sum or sums of money upon the
life of him the said (*grantor*) if he or they shall
think proper so to do. AND that in case of any
such assurance being made, he the said (*grantor*)
shall not nor will leave the United Kingdom of
Great Britain and Ireland, without giving unto
the said (*grantee*) his executors, administrators,
or assigns, one calendar month's notice thereof,
at the least, nor do or cause to be done, any act
or thing whatsoever, whereby the said assurance
shall or may be vacated or annulled, or rendered
void or voidable, or otherwise prejudicially af-
fected in any manner howsoever. AND that if the
said (*grantor*) shall leave the United Kingdom, so
as to occasion the said (*grantee*) his executors, ad-
ministrators, or assigns, any extra premium or ex-
pense, for effecting or continuing any such assur-
ance, he the said (*grantor*) his executors, or ad-
ministrators, shall and will from time to time as
often as the same shall happen, well and truly pay

*Secured on
Leaseholds.*

Grantor will
not prejudice
the policy of
assurance.

Will pay extra
insurance on
leaving the
kingdom.

ANNUITIES.

*Secured on
Leaseholds.*

Cesser of an-
nuity.

or cause to be paid the amount thereof unto him or them, within seven days' next thereafter, and in default thereof, the same shall be chargeable upon the premises hereby assigned, and recoverable in like manner as any arrears of the said annuity or yearly sum hereby granted. PROVIDED ALWAYS, and it is hereby declared and agreed to be the true intent and meaning of the parties hereto, that from and after the decease of the said (*grantor*) or (*grantee*) (1) and full payment and satisfaction of all arrears of the said annuity or yearly sum of £ , up to and including his decease, and all costs and expenses which may have been occasioned by reason of any default in payment thereof, or in the execution of the trusts of these presents, all and every the several securities given or provided for payment of the same annuity or yearly sum, shall cease and be void, and, unless filed or on record, be delivered up to be cancelled, and the messuages or tenements and premises hereby chargeable with the payment of the said annuity or yearly sum, and the monies, funds, and securities arising from the sale, mortgage, or other disposition thereof, or so much and such parts of the said messuages or tenements, monies, funds, and securities as shall remain after satisfaction of the trusts aforesaid, shall respectively be paid, assigned, transferred, and disposed of, in such man-

Nominees.

(1) If the annuity be granted for the lives of nominees, say,
“ From and after the decease of the survivor or longest liver of the said (*nominees*). ”

ner as the said (*grantor*) his heirs, executors, administrators, or assigns shall reasonably require concerning the same. AND WHEREAS it hath been agreed that judgment shall be forthwith confessed and entered up against the said (*grantor*) by virtue of the said in part recited warrant of attorney, but with such stay of execution as hereinafter is mentioned. Now it is hereby further witnessed, to be the true intent and meaning of these presents, that the said judgment shall be and be considered as a collateral or further security only for the payment of the said annuity or yearly sum of £ , and that no execution shall be issued out, upon, or by virtue of the same until some quarterly payment, or other portion thereof, shall be in arrear for the space of twenty-one days next after the time hereinbefore appointed for payment thereof, [but that when and so often as the same annuity shall be so in arrear, it shall be lawful for the said (*grantee*) his executors, administrators, and assigns, to sue out any such execution for the recovery of all arrears thereof, and all costs, charges, and expenses which shall have been sustained or occasioned by reason of the non-payment of the same, or of any such extra premium or assurance money as aforesaid, although the said judgment may have been entered on record for the space of one year or upwards, or the said (*grantor*) shall be then dead, and that without any act being done to revive or cause to be revived the same; and that if the said (*grantor*) his heirs, executors, or administrators shall endeavour to take or receive any advan-

ANNUITIES.

Secured on
Leaseholds.

Judgment a collateral security only.

But execution may be sued out for arrears.

ANNUITIES.

*Secured on
Leaseholds.*

**FURTHER
WITNESS,
power of re-
purchase.**

tage for want of the said judgment having been revived or kept on foot or by reason of any other defect or omission in relation thereto, this present agreement shall and may be pleaded and shown in bar thereto, and be and operate as an effectual bar thereto accordingly, any rule or practice of the court in which any such judgment shall have been entered up to the contrary, in any wise notwithstanding.] AND WHEREAS upon the treaty for the purchase of the said annuity, it was agreed that the said (*grantor*) should at any time hereafter [*or from and after the end of* years from the date hereof] be at liberty to repurchase the same upon the terms and conditions next hereinafter mentioned. Now THIS INDENTURE ALSO FURTHER WITNESSETH, that he the said (*grantee*) for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, declare, and agree with and to the said (*grantor*) his executors, administrators, and assigns, that in case he the said (*grantor*) shall at any time hereafter [*or after the aforesaid day of* , which will be in the year .] give or cause to be given unto the said (*grantee*) his executors, administrators, or assigns, six calendar months' notice in writing, under his or their hand or hands, of his or their desire to repurchase the said annuity or yearly sum of £ , or in lieu of such notice shall pay unto the said (*grantee*) his executors, administrators, or assigns, the sum of £ , being one half-year's payment of the same annuity or yearly sum, and do and shall at the expiration of such notice, or

within one calendar month next thereof, or on such payment in lieu thereof as aforesaid, well and truly pay or cause to be paid (1) unto him the said (*grantee*) his executors, administrators, or assigns, the sum of £ of lawful money of that part of the United Kingdom of Great Britain and Ireland called England, together with all such sum and sums of money as shall be then due for or in respect of the said annuity or yearly sum up to and including the day of the expiration of the said notice, or payment in lieu thereof as aforesaid, and all costs and charges which shall have been incurred by reason of any default or delay in payment of the same, or of any such extra premium or assurance money as aforesaid, he the said (*grantee*) his executors, administrators, and assigns, shall and will, at the request, costs, and charges in the law of the said (*grantor*) release, surrender, or assign, or cause to be released, surrendered, or assigned, the same annuity or yearly sum, together with these presents respectively, and all other securities for the same, and all and singular the messuages, or tenements and premises hereby made chargeable with the payment thereof, for the residue of the term of years, which shall be then to

ANNUITIES.

*Secured on
Leaseholds.*

(1) If it be agreed that the purchase of the annuity shall be by a transfer of stock, see No. II. p. 66, n. (92), p. 68, n. (96). Transfer of stock.

If the grantor is to have liberty to repurchase the annuity by instalments, see *ante*, p. 66, n. (95). Instalments.

ANNUITIES.

Secured on
Leaseholds.

come and unexpired, or so much and such part of the said messuages and premises, as shall not have been disposed of under or by virtue of these presents, and transfer or assign all such principal money as shall have been invested in government or other securities, for the purposes aforesaid, or so much and such parts thereof as shall not have been applied and disposed of, for the same purposes, unto the said (*grantor*) his executors, administrators, or assigns, or unto such other person or persons, and upon and for such lawful trusts, ends, intents, and purposes, and in such manner and form as the said (*grantor*) his executors, administrators, or assigns, or his or their counsel in the law, being of the degree of a barrister, shall reasonably advise and require (1). IN WITNESS, &c.

Production of
title deeds.

(1) If the title deeds be not delivered over to the grantee, &c. add,

“AND WHEREAS it has been agreed between the parties to these presents, that the counterpart of the lease of the aforesaid premises, whereupon the said ground rent or sum of £ is reserved, should remain and continue in the hands of the said (*grantor*): Now he the said (*grantor*) doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said (*grantee*) his executors, administrators, and assigns, that he the said (*grantor*) his heirs, executors, or administrators, shall and will at any time or times hereafter, at the request of the said (*grantee*) his executors, administrators, and assigns, produce and show forth, or cause to be produced and

shown forth, unto the said (*grantee*) his executors, administrators, or assigns, in any court of law or equity, or otherwise, as occasion may require, the counterpart of the said in part recited lease, for the better enabling him or them, or any of them, in case default shall happen to be made in payment of the said annuity, or yearly sum of £ hereby granted, or any part thereof, at the days or times, or in the manner aforesaid, to demand, sue for, recover and receive all and every the rent and rents reserved upon or by the said lease, and take all lawful remedies for recovering the same, by way of distress, entry, or otherwise, as shall be necessary or expedient." And see Vol. III. p. 160, rider (C).

ANNUITIES.

*Secured on
Leaseholds.*

If a receiver be appointed for the purpose of keeping Receiver.
down the annuity, insert such appointment here, as *ante*,
p. 99, rider (F).

. See various other provisos, &c. to be added where cir- Provisos, &c.
cumstances may require, *ante*, p. 75, *et seq.* and *post*, p. 244.

ANNUITIES.

*Secured on
Leaseholds.*

(A.) Variation *by way of Addition where the Annuity is secured on a Lease determinable with Lives* (1). See *ante*, p. 236, n. (1).

Covenant for
grantee or trustee to renew
lease, if grantor
fail.

“AND moreover it is hereby further agreed and declared by and between the said (*grantor*) and (*grantee*) that in case it shall happen that one or more of the persons, on the dropping of whose life or lives respectively, the said in part recited lease of the said premises is determinable, shall die, during the subsistence of the said annuity hereby granted or secured, and the said (*grantor*) his executors, administrators, or assigns, shall at any time or times, upon the request of the (*grantee*) or (*trustee*) his executors, administrators, or assigns, refuse or neglect to renew his or their estate, term, or interest in the said premises, by adding one or more life or lives in the room of the person or persons so dying, and to subject such new estate, term, or interest to the payment of the annuity or yearly sum of £ hereby granted or secured, and for that purpose duly to assign the said premises for all such new term and interest unto the said (*grantee*) or (*trustee*) his executors, administrators, and assigns, or shall make any failure in payment of the said annuity or yearly sum of £ , or shall permit the yearly rent reserved in or by the said recited indenture of lease, or any part thereof, to be behind and unpaid, that then, and in any or either of the said cases, it shall and may be lawful for the said (*grantee*) or (*trustee*) his executors, administrators, or assigns, from time to time, to pay off and discharge all such arrears of rent as shall be so unpaid, and also to contract or agree with the person or persons who shall be entitled to

(1) And see also *ante*, Vol. V. “*Mortgage of Lease for Lives*.”

the freehold and inheritance of the said leasehold premises for the time being, for the renewal of such lease or leases, and the addition of one or more life or lives in the room of the person or persons so dying, and from time to time, as often as there shall be occasion, to pay the fine or fines, or other consideration or considerations for such renewal or renewals, and all fees and expenses attending the same, and thereupon to surrender or cause to be surrendered the said recited lease, or the lease or leases to be hereafter had, renewed, or taken of the same leasehold premises, or any of them, and to take a new lease or leases, grant or grants, of the said premises as often as there shall be occasion, in the name or names of the said (*grantee*) or (*trustee*) his executors, administrators, or assigns, or in the name or names of any other person or persons, In trust for the said (*grantee*) his executors, administrators, or assigns, for such term or terms, or number of years determinable upon the dropping of such number of lives as has or have been usually granted, or can be obtained, which lease or leases so to be renewed and taken shall be chargeable with all and every sum and sums of monies, costs, and charges which he the said (*grantee*) or (*trustee*) his executors, administrators, or assigns shall expend from time to time, or be put unto, for the purposes or ends aforesaid, or any or either of them, with interest for the same, after the rate of £5 per cent. per annum, and shall not be redeemed or redeemable by the said (*grantor*) his executors, administrators, or assigns, until he or they shall have fully paid and satisfied to the said (*grantee*) his executors, administrators, or assigns, as well the monies by him or them paid for such rent or rents in arrear, and the fine or fines or considerations for such renewal, and costs and charges aforesaid, with interest thereof after the rate aforesaid, as also the said annuity or yearly sum of £ , hereby granted or secured, and all arrears thereof, nor until the said (*grantee*) his heirs, executors, administrators, or assigns shall have given a sufficient indemnity to the person or persons in whose name or names such new lease or leases shall be taken, his and their heirs,

ANNUITIES.

Secured on
Leaseholds.

ANNUITIES. executors, and administrators, and his and their real and

Secured on
Leaseholds.

personal estates of, from, and against all costs, charges, damages, and expenses which shall or may be recovered against or sustained, expended, or borne by them, or any of them, by reason, or means, or on account of having renewed such lease or leases in pursuance of the covenants or agreements herein contained in that behalf,"

ANNUITIES.

Secured on
Money in the
Funds.

No. VIII.

*Grant of an Annuity secured on Money in the
Funds during the Life of the Grantor.*

*Variations where the Wife of the Grantor is interested
in the Funds.*

*Where such Wife is an equitable Feme-sole under a
Will or Settlement.*

*Where the Stock is transferred into the Names of
Trustees.*

*Where the Annuity is granted to several Grantees,
&c. &c. as in Margin below.*

THIS INDENTURE of parts, made the
day of [* in the year of the reign,
&c. and] in the year of our Lord . BE- Parties.
TWEEN (*the grantor*) (1) of, &c. of the one

* If brevity is particularly desired, the parts within brackets Brevity.
may be omitted throughout the precedent.

(1) If the wife of the grantor be entitled to an absolute in- Wife.
terest in the dividends for her own use, either immediately or
upon surviving her husband, and she has consented on a pri-
vate examination in court to join in the assurance, see *Jones*
v. Harris, 9 Ves. jun. 486, *Woollands v. Crowcher*, 12 *ibid.*
174, *Sturgis v. Corp*, 13 *ibid.* 190, *Essex v. Atkins*, 14 *ibid.*
542, make her a party jointly with her husband: or the hus-
band alone, if her interest be for life only, may assign them;
see *Ellicot v. Cordall*, 1 Jac. and Walk. 149: but in most cases
an assignment by the husband will be subject to the equity of
the wife for a provision out of her separate property; see *ib.*
and *Murray v. Elibank*, 13 Ves. 1; and *post*, p. 258, n. (1).

ANNUITIES. part, and (*the grantee*) of, &c. of the other
 Secured on Money in the Funds. part (1). WHEREAS by virtue and in pursuance
 of an indenture bearing date the day of
 , which was in the year (2), and
 Recital of marriage settlement. made or expressed to be made between, &c. pur-
 porting to be a settlement made upon a marriage
 then intended, and which afterwards took effect
 between the said (*husband*) and (*wife*) the sum of
 £ three per cent. consolidated bank an-
 nuities, was transferred into the names of the said
 (*trustees*) in the books of the governor and com-
 pany of the Bank of England, Upon trust that
 they the said (*trustees*) and the survivors and sur-
 vivor of them, and other the trustees or trustee
 for the time being of the said funds and securities
 should pay and apply the interest, dividends, and
 proceeds thereof, as the same should from time to

Trustees.

(1) Annuities secured upon money in the funds are usually granted during the life of the grantor, who is generally entitled to a present life interest only in the dividends under a will or marriage settlement, in which case the funds must be supposed to be standing in the names of the trustees or executors of such settlement or will. But if the grantor have an absolute present interest in the funds upon which the annuity is intended to be secured (in which case, however, the necessities of the proprietor are generally supplied by sale of the stock,) it should be transferred into the names of two or more trustees, who may properly be named of the third part.

Trustee party.

And if the dividends assigned be of much greater amount than the annuity, it will also be proper on the part of the grantor, although he be entitled to a life interest only, that a trustee should be party.

Will.

(2) If the grantor derive his title under a will, recite such will agreeably to the form given, *ante*, p. 170; and Vol. V. p. 228; also *post*, p. 284, rider (C).

time arise or be received, or be payable from and after the said marriage, unto the said (*grantor*) and his assigns, or otherwise permit and empower him and them to receive and retain the same, to and for his and their own use and benefit, during the term of his natural life, and from and immediately after his decease, Upon trust to pay, apply, and dispose of the same, and the said funds and securities in the manner therein expressed. **ANNUITIES.**

Secured on
Money in the
Funds.

AND WHEREAS the said (*grantee*) hath agreed (1) with the said (*grantor*) for the purchase of an annuity, or clear yearly sum of £ for the life of the said (*grantor*) to be paid at the time and in the manner hereinafter mentioned, at or for the price or sum of £ . AND upon the treaty for the said purchase it was agreed that for the better ensuring the payment of the said annuity, the same should be secured by the bond or obligation of the said (*grantor*) and a warrant of attorney, to confess judgment thereon, and also by such assignment (2) of the dividends and in-

Contract for
purchase.

(1) If the annuity be granted in pursuance of a prior agreement in writing, recite such agreement, as in No. II. p. 13, n. (†). **Prior agreement.**

(2) If the annuity be intended to be secured by a transfer of stock to trustees, say, **Stock transferred to trustees.**

“ AND also by the transfer of £ three per cent. consolidated bank annuities from the said (*grantor*) to the said (*trustees*), upon the trusts hereinafter expressed. AND WHEREAS the said (*grantor*) hath this day transferred the said sum of £ three per cent. consolidated bank annuities into the joint names of them the said (*trustees*) in the

ANNUITIES. Interest of the said £ three per cent.

**Secured on
Money in the
Funds.**

Recital of bond,

And warrant of attorney.

**WITNESS, that
in considera-
tion, &c.**

consolidated bank annuities, as hereinafter is expressed (1). AND in part performance of the said agreement, the said (*grantor*) by his bond or obligation in writing, bearing even date with these presents, hath become bounden for himself and his heirs to the said (*grantee*) his executors, administrators, and assigns, in the penal sum of £ , with a condition thereunder written, for making void the same on payment of the said annuity or yearly sum of £ , on the days, at the times, and in the manner therein and hereinafter particularly mentioned. AND hath also executed a warrant of attorney bearing even date with the said bond, empowering certain attorneys therein named to confess judgment against him in an action of debt (2) on the said bond in the court of at Westminster, in or as of term next, or of any subsequent term, for the said sum of £ , together with costs of suit, and judgment is intended to be entered up thereupon accordingly. Now THIS INDENTURE WITNESSETH, that in further performance of the said agree-

books of the governor and company of the Bank of England.

Surety.

**Warrant of
attorney only.**

(1) If a surety for the grantor join, see No. II. p. 15, n. (10).

(2) If there be no bond, but a warrant of attorney only, given, say,

“ For money had and received at the suit of the said
(*grantee*).”

And see *ante*, No. II. pp. 15, 119.

ment, and for and in consideration of the sum of **ANNUITIES.**
 £ of good, lawful, and current money of
 that part of the United Kingdom of Great Britain
 and Ireland called England(1) to the said (*grantor*)
 in hand well and truly paid by the said (*grantee*)
 at or immediately before the sealing and deli-
 very of these presents (2), (*or as the case may*
be) [being the same sum of £ as is men-
 tioned in the condition of the hereinbefore in
 part recited bond] the receipt of which said sum
 of £ , and that the same is in full for the
 purchase of the said annuity or yearly sum of
 £ during the natural life of the said (*grantor*)
 the said (*grantor*) doth hereby acknowledge [and of
 and from the same and every part thereof, doth ac-
 quit, release, exonerate, and for ever discharge the
 said (*grantee*), his executors and administrators, by
 these presents] HE (3) the said (*grantor*) HATH
 given, granted, bargained, and sold, and by these
 presents DOTH for himself, his heirs, executors, and
 administrators, give, grant, bargain, and sell unto
 the said (*grantee*) his executors, administrators,

Secured on
Money in the
Funds.

The grantor
grants the an-
nuity.

(1) If the consideration be other than money paid at the time of the execution of the securities, see No. II. p. 75, *et seq.* Consideration.

If there be two or more grantees, see *post*, p. 278, rider (B).

(2) If the annuity be granted in pursuance of a prior agreement, and part of the consideration money were paid at the time of the execution of such agreement, see No. II. p. 13, n. (†).

Several
grantees.
Prior agree-
ment.

(3) If the wife of the grantor be a party, say,

Wife.

“ They the said (*grantor*) and his wife HAVE,
 and each of them HATH,” &c. *as above*.

ANNUITIES.

Secured on
Money in the
Funds.

TO HOLD to the
grantee during
the life of the
grantor.

and assigns, one annuity or clear yearly sum of £ of lawful and current money of that part of the United Kingdom of Great Britain and Ireland called England, to be paid and payable unto him the said (*grantee*) his executors, administrators, and assigns, for and during the natural life of him the said (*grantor*) free and clear of and from all taxes and deductions whatsoever, and to be charged and chargeable upon and issuing and payable out of and from all and singular the said principal sum of £ three per cent. consolidated bank annuities, and the dividends, interest, and annual proceeds thereof. To HAVE, HOLD, receive, perceive, take, and enjoy the said annuity, or clear yearly sum of £ hereby granted or expressed, or intended so to be, unto and by him the said (*grantee*) his executors, administrators, and assigns, [to and for his and their own proper use and benefit, (*or as the case may be*)] (1) from henceforth for and during the natural life of the said (*grantor*) and up to the day of his decease; the said annuity or yearly sum of £ to be paid and payable at or in the common dining hall of the Inner Temple, London, or at the usual place of abode for the time being of the said (*grantee*) his executors, administrators, or assigns, or elsewhere when lawfully demanded, by two even and equal half-yearly payments between the hours

Beneficial
grantee.

(1) See *ante*, No. II. p. 25, n. (25).

of ten and twelve of the clock in the forenoon of the several and respective days and times herein-after mentioned, (that is to say) on the day of _____, and the _____ day of _____ in every year, and also a due and proportionable part of the said annuity or yearly sum of £ _____ for or in respect of so many days as shall happen to have elapsed from the last half-yearly day of payment thereof, next preceding the decease of the said (*grantor*) up to and until the day of his death (being the same days and times as are mentioned in the condition and defeazance of the hereinbefore in part recited bond and warrant of attorney respectively) and to be made free and clear of and from any deduction or abatement whatsoever, the first payment of the said annuity or yearly sum of £ _____ to be made on the _____ day of _____ next ensuing the date of these presents, if he the said (*grantor*) shall be then living, and if not, then a proportionate part thereof, immediately after his decease. AND the said (*grantor*) for himself, his heirs, executors, and administrators, doth covenant, promise, and agree with and to the said (*grantee*) his executors, administrators, and assigns, by these presents, in the manner following, (that is to say) that he the said (*grantor*) { his heirs, executors, or administrators, } shall and will well and truly pay, or cause to be paid unto the said (*grantee*) his executors, administrators, or assigns, for and during the term of the natural life of him the said (*grantor*) the said annuity or clear yearly

ANNUITIES.

*Secured on
Money in the
Funds.*

Covenant for
payment of the
annuity.

ANNUITIES.

**Secured on
Money in the
Funds.**

sum of £ at and upon the days and times, and in the manner and form hereinbefore, and in the condition of the said in part recited bond appointed for payment of the same respectively, and also a proportionate part of the same respectively, from the commencement of any quarter, wherein the said (*grantor*) shall happen to die, up to and until the day of his death, according to the true intent and meaning of these presents (1). AND WHEREAS (2) upon the treaty for the purchase

Reduction of annuity.

(1) If it be agreed that the amount of the annuity shall be reduced on punctual payment, insert here the variation subjoined to No. II. p. 87, rider (C).

Money transferred to trustees.

(2) If the annuity be secured by the transfer of stock to trustees, instead of the assignment of the dividends, say,

“ AND THIS INDENTURE FURTHER WITNESSETH, and it is hereby declared and agreed by and between the parties hereto, that they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, shall stand possessed of and interested in the said sum of £ three per cent. consolidated bank annuities, so standing in their names in the books of the governor and company of the Bank of England as aforesaid, and the dividends, interest, and annual produce thereof, upon the trusts, and for the intents and purposes following, that is to say, Upon trust to permit and suffer, and authorize and empower the said (*grantor*) and his assigns to receive and retain the dividends, interest, and annual produce of the said £ three per cent. consolidated bank annuities, to and for his and their own use and benefit, until default shall happen to be made in payment of the said annuity or yearly sum of £ [or some part or proportion thereof,] at or upon the days or times, and in the manner hereinbefore appointed for pay-

of the said annuity, it was agreed that for the better **ANNUITIES.**
 securing the payment thereof, the said (*grantor*)
 should assign and make over unto the said (*grantee*)
 [or (*trustee*)] the dividends, interest, and produce **Secured on**
 of the said sum of £ three per cent. consolidated **Money in the**
 bank annuities, upon such trusts, and with such **Funds.**
 powers and remedies for recovering the same, as
 hereinafter is expressed. Now THIS INDENTURE
 FURTHER WITNESSETH, that in pursuance of the **FURTHER**
 last mentioned agreement, and for the considera- **WITNESS, that**
 tions aforesaid, [and also for and in consideration **grantor assigns**
 of the sum of ten shillings of lawful current money **dividends.**
 of England to the said (*grantor*) in hand well and
 truly paid by the said (*grantee*) at or before the
 execution of these presents, the receipt whereof is
 hereby acknowledged], HE the said (*grantor*) (1)
 HATH granted, bargained, sold, assigned, trans-
 ferred, and set over, and by these presents BOTH
 grant, bargain, sell, assign, transfer, and set over,
 unto the said (*grantee*) [or (*trustee*)] his executors,
 administrators, and assigns, all that and those the

ment thereof; and in case the said annuity or yearly sum of
 £ shall happen to be in arrear and unpaid by the space
 of days, next after any or either of the days or times
 hereinbefore appointed for payment thereof, Then upon
 trust, by and out of the dividends, interest," &c. *as above*;
 p. 257, marg. *; and 276, rider (A).

(1) If the wife of the grantor be a party, say, **Wife.**
 " They the said (*grantor*) and his wife, HAVE
 and each of them HATH," &c. *as above*.

ANNUITIES. said £ three per cent. consolidated bank annuities so standing in the names of the said in the books of the governor and company of the Bank of England as hereinbefore is mentioned, and all and every the dividends, interest, and annual proceeds now accruing and arising, and which from time to time or at any time hereafter during the natural life of the said (*grantor*) shall or may accrue or arise from, upon, or in respect of the same, or other the funds or securities upon which the same, or any part thereof, shall or may at any time be transferred or invested, and all and every the powers and remedies whatsoever of him the said (*grantor*) for recovering, receiving, or enforcing the payment of the same. AND all the estate, right, title, interest, use, trust, property, possession, claim, and demand whatsoever, both at law and in equity, of him the said (*grantor*) of, in, and to the said bank annuities, dividends, interest, and proceeds, and every of them respectively. To HAVE AND TO HOLD, receive, perceive, take, and enjoy the said bank annuities, funds, securities, and dividends, interest, annual proceeds, and other the premises hereby assigned, or intended so to be, unto and by him the said (*grantee*) [or (*trustee*)] his executors, administrators, and assigns, from henceforth for and during the term of the natural life of the said (*grantor*) upon the trusts nevertheless, and to and for the ends, intents, and purposes, and under and subject to the provisos, declarations, and agreements, hereinafter declared

Secured on
Money in the
Funds.

To HOLD to the
grantee for the
life of grantor.

or expressed concerning the same (1). AND for the better enabling the said (*grantee*) his exe-

ANNUITIES.

Secured on
Money in the
Funds.

(1) If the dividends greatly exceed the amount of the annuity, they may be assigned to a trustee instead of the grantee himself in part to permit the grantor to receive them until default; but if they be barely sufficient to answer the annuity, the trust should be as above; but if the grantee should receive them, and the annuity afterwards become in arrear, and the grantor die, the grantee should lose the arrears.

Trustee.

If it be to a trustee, it may be,

“ Upon trust to permit and suffer the said (*grantee*) and his assigns, to receive and retain the said dividends, interest, and annual proceeds of the said bank annuities, to and for his and their own proper use and benefit, until default shall happen to be made in payment of the said annuity or yearly sum of £ at the times or in the manner hereinbefore appointed for payment thereof. But in case and immediately from and after any default shall be made in payment thereof, then,” &c. *as above*.

Trustee party.

If the annuity be secured by the transfer of stock, add here,

Money trans-
ferred to
trustees.

“ And from and after the decease of the said (*grantor*) or the cessation or extinguishment of the said annuity or yearly sum of £ by any other means whatsoever, and full payment and satisfaction of all such arrears, costs, and charges as aforesaid, THEN UPON TRUST to transfer the said principal sum of £ three per cent. consolidated bank annuities unto the said (*grantor*) his executors, administrators, and assigns, to and for his and their own proper use and benefit, and in the mean time, and until such transfer shall be so made as aforesaid, they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor shall stand possessed of and interested in the same, IN TRUST for the said (*grantor*) his executors, administrators, and assigns, or such other person or persons as he or they shall direct or require.”

*

ANNUITIES.

Secured on
Money in the
Funds.

Letter of attorney to receive
dividends.

cutors, administrators, and assigns, to recover and receive the said dividends, interest, and proceeds, he the said (*grantor*) HATH made, constituted, and appointed, and by these presents DOTH make, constitute, and appoint the said (*grantee*) (or *trustee*) the executors, administrators, and assigns, his true and lawful attorney and attornies irrevocable of and for him the said (*grantor*) his executors or administrators, and in his or their name or names, or otherwise as he or they shall think fit, from time to time and at all times hereafter during the natural life of the said (*grantor*) to demand and receive all and singular or any part of the dividends, interest, and proceeds hereby assigned, or expressed or intended so to be, of and from the said (*trustees of the settlement*) and all and every other the trustees or trustee for the time being of the funds and securities aforesaid, or other persons or person liable to pay the same, [and upon receipt thereof, or of any part thereof, to sign and give receipts, releases, acquittances, and other proper and effectual discharges from time to time for the same, either in the name or names of him the said (*grantor*) his executors, administrators, or assigns,] or otherwise as shall be deemed necessary or proper (1), and upon non-payment thereof,

Wife entitled.

(1) If the grant be by husband and wife, and the wife be entitled to the assigned dividends from the hands of the accountant-general for her own use, she must appear personally in court, to consent to the prayer of the petition to be pre-

or of any part thereof, in the name or names, and **ANNUITIES.**
in the manner aforesaid, or otherwise, to com-

*Secured on
Money in the
Funds.*

sented for the dividends to be paid to the grantee, see *ante*,
p. 247, n. (1); and in such case the following addition may be
made to this part of the draft :

“ And from time to time during the life of the said *Application to*
(*wife*) to indorse the name of her the said (*wife*) upon all *chancery.*
and every the warrant and warrants which shall be drawn
by the said accountant-general, and payable to the said
(*wife*) for the dividends and interest of the said sum of
£ three per cent. consolidated bank annuities, with
power for him the said (*grantee*) to substitute, depute, and
appoint under him or them any other person or persons
from time to time for that purpose. And the said (*grantor*)
and his wife, do and each of them doth hereby autho-
rise and empower the said (*grantee*) his executors, admini-
strators, or assigns, either in his, her, or their name or
names, or otherwise, to apply to the said Court of Chancery,
for the purpose of carrying the said decree or decretal
order, and these presents into execution; and further, to
do and execute all and every other act and acts, requisite or
expedient for effecting the premises as fully and effectually
to all intents and purposes as they the said (*grantor*) and
his wife, or either of them might or could do or have
done in his, her, or their own proper person or persons, if
these presents had not been made, and the said (*grantor*)
and his wife do and shall and will consent to and
concur therein at all times when there shall be occasion, and
do hereby also declare and agree that the expense of such
application, acts, matters, and things as aforesaid, shall be
borne and paid by them the said (*grantor*) and his
wife, or one of them, and that he the said (*grantee*) his
executors, administrators, or assigns, shall or lawfully may
take the same, from and out of the said dividends, interest,
and premises accordingly.”

ANNUITIES.

*Secured on
Money in the
Funds.*

Direction to
trustees to pay
dividends to
grantee.

mence and prosecute all such or the like actions, suits, measures, and proceedings, and use, exercise, and pursue all such or the like powers, remedies, expedients, ways and means whatsoever, for compelling payment of and recovering the same, as he the said (*grantor*) his executors, administrators, or assigns, might or could personally or otherwise do or have done in case these presents had not been made, with full power and authority to substitute, depute, and appoint, under, or in the room or stead of him or them the said (*grantee*) his executors, administrators, or assigns, or any other person or persons from time to time, for all or any of the purposes aforesaid, at his or their free will and pleasure, he the said (*grantor*) hereby ratifying, allowing, and confirming, and promising and agreeing at all times and from time to time hereafter, to ratify, allow, and confirm all and whatsoever his said attorney or attornies, or the attorney or attornies of him the said (*grantee*) his executors, administrators, or assigns shall lawfully do or cause to be done in or concerning the premises by virtue of these presents, or otherwise howsoever. AND the said (*grantor*) doth hereby authorise and direct the said (*trustees*) and all and every other the trustee or trustees for the time being of the said funds and securities, to pay the dividends, interests, and proceeds thereof during the natural life of him the said (*grantor*) as and when the same shall arise and become payable unto the said (*grantee*) his executors, administrators, and assigns, or his or their

lawful attorney or attornies in that behalf. AND ANNUITIES.
 it is hereby declared and agreed by and between
 the parties hereto, so far as they are respectively
 interested, that he the said (*grantee*) (or *trustee*)
 his executors, administrators, and assigns, shall
 and will stand and be possessed of and interested
 in all and singular the dividends and interest,
 trusts, monies, and premises hereby assigned or
 otherwise assured, or mentioned or intended so
 to be, upon the trusts and to and for the ends,
 intents, and purposes following (that is to say)
 UPON TRUST for better securing the payment of
 the said annuity or yearly sum of £ and all
 costs and charges attendant thereupon, AND for
 that purpose, upon trust that he the said (*grantee*)
 (or *trustee*) his executors, administrators, or as-
 signs, shall and lawfully may by and out of the
 dividends, interest, and proceeds of the said funds
 and securities, as and when the same shall from
 time to time become due and payable, or by sale
 or other disposition of the said dividends, interest,
 and proceeds for and during the natural life of
 the said (*grantor*) or by any other lawful ways or
 means whatsoever, raise and obtain and retain
 and pay the said annuity or yearly sum of £
 together with all costs, charges, and expenses
 which he or they shall have sustained or been
 put unto by reason of the nonpayment of the
 same or any part thereof, or in any wise relating
 thereto. And from and after full payment and
 satisfaction of the said annuity or yearly sum of
 £ together with all such costs, charges,

*Secured on
Money in the
Funds.*

*Trusts of the
dividends, &c.*

ANNUITIES.

Secured on
Money in the
Funds.

Covenants that
grantor is in re-
ceipt of divi-
dends, &c.

and expenses as aforesaid, Then upon trust that he the said (*grantee*) his executors, administrators, and assigns, shall and do from time to time pay and apply the residue or net surplus (if any) of the said dividends, interest, and proceeds, in case the same shall be received and paid by or out of the same, unto him the said (*grantor*) his executors, administrators, or assigns, or other person or persons who for the time being shall or may be entitled thereto, for his or their own proper use and benefit; but in case the same shall be received or paid by or out of the sale of the said funds or securities, then upon trust that he the said (*grantee*) (or *trustee*) his executors, administrators, or assigns, shall or lawfully may lay out and invest the surplus thereof after such payments as aforesaid, in the purchase of government or other funds or securities in the names of him the said (*grantee*) (or *trustee*) his executors, administrators, or assigns, upon such trusts, to answer and pay the said annuity or yearly sum in future, as the said (*grantee*) his executors, administrators, or assigns, or his or their counsel in the law shall reasonably advise or require. AND the said (*grantor*) for himself, his heirs, executors, and administrators, doth hereby covenant, declare, and agree with and to the said (*grantee*) (or *trustee*) his executors, administrators, and assigns, in the manner following (that is to say) that he the said (*grantor*) at the time of the sealing and delivery of these presents, is in the receipt and absolute enjoyment of, and well entitled in possession to

the dividends, interest, and proceeds hereby assigned, or mentioned or intended so to be, and hath not at any time or times heretofore sold, assigned, disposed of, released, charged, or in any manner incumbered the same, or any part thereof, or any estate, right, title, or interest therein or thereto, nor done, committed, or knowingly suffered any other act, matter, or thing whatsoever whereby or by reason or means whereof the same or any part thereof is, are, shall, or can be impeached, incumbered, or otherwise prejudicially affected in any manner howsoever, or whereby the said (*grantee*) (or *trustee*) his executors, administrators, or assigns, or his or their lawful attorney or attornies can or may be prevented from receiving the same or any part thereof. AND that he the said (*grantor*) now hath in himself good right, full power, and lawful and absolute authority to charge the said dividends, interest, and premises, with the payment of the said annuity or yearly sum of £ . AND also to assign the same dividends, interest, and proceeds unto the said (*grantee*) (or *trustee*) his executors, administrators, and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents. AND further, that all and singular the said dividends, interest, and proceeds shall from time to time and at all times hereafter, during the subsistence of the said annuity or yearly sum of £ , continue and be subject to and chargeable with the payment of the same, according to the true intent and meaning of the trusts, provisos,

ANNUITIES.

Secured on
Money in the
Funds.

And hath right
to charge and
assign.

That the dividends shall continue charged.

ANNUITIES.

Secured on
Money in the
Funds.

Further as-
surance.

and agreements hereinbefore expressed concerning the same. AND that any receipt by or payment to the said (*grantor*) his executors or administrators, of all or any part of the said dividends, interest, or proceeds, at any time or times after the execution of these presents, shall not in anywise vacate or be construed to vacate, revoke, or otherwise affect the powers or authorities hereinbefore given to the said (*grantee*) (or *trustee*) his executors, administrators, or assigns, to receive the same. [AND further, that he the said (*grantor*) his executors or administrators, shall not nor will at any time hereafter during the continuance of the said annuity or yearly sum of £ or any arrears thereof, without the consent in writing of the said (*grantee*) his executors, administrators, or assigns, revoke or make void the powers, authorities, or directions hereinbefore contained in relation to the said dividends, interest, or proceeds, or any part thereof, or do or cause to be done or concur in or assent to any act, deed, matter, or thing whatsoever, whereby the same powers, authorities, or directions shall or may be in any manner impeached or prejudiced.] AND moreover that he the said (*grantor*) and all and every person and persons who for the time being shall or may be intitled to or lawfully claim any estate or interest in or to the dividends, interest, or proceeds hereby assigned, or intended so to be, shall and will upon every reasonable request of the said (*grantee*) his executors, administrators, or assigns, but at the costs and charges of the said (*grantor*) his

executors or administrators, make, do, acknow-
 ledge, execute, and perfect, [or cause or procure
 to be made, done, acknowledged, executed, and
 perfected] all and every such further and other
 lawful and reasonable acts, deeds, assignments,
 and assurances in the law whatsoever, for the fur-
 ther, better, more perfectly, and absolutely or
 satisfactorily granting or securing the said an-
 nuity or yearly sum of £ unto the said
 (*grantee*) his executors, administrators, and as-
 signs, and for the assigning or assuring to him or
 them for that purpose, or his or their trustee or
 trustees, the dividends, interest, and annual pro-
 ceeds of the said sum of £ bank annuities,
 and all and every other funds and securities which
 may at any time or times hereafter be substituted
 in the place or stead thereof, unto the said (*grantee*)
 (*or trustee*) his executors, administrators, or as-
 signs, and for empowering and enabling him and
 them to receive the same upon and for the trusts,
 intents, and purposes of these presents, as he or
 they, or his or their counsel in the law, being of
 the degree of a barrister, shall advise and re-
 quire. PROVIDED ALWAYS, and it is hereby de-
 clared and agreed that in case the said sum of
 £ bank annuities, or any part thereof, shall
 at any time during the subsistence of the said an-
 nuity or yearly sum of £ be purchased or
 redeemed by government, or in case the same or
 any part thereof shall be sold out by the trustees
 or trustee for the time being of the said herein-

ANNUITIES.

*Secured on
 Money in the
 Funds.*

*If annuities re-
 deemed or
 changed, other
 funds to be
 substituted.*

ANNUITIES.

*Secured on
Money in the
Funds.*

If dividends
not sufficient,
grantor to make
up the de-
ficiency.

before in part recited settlement, in pursuance of any of the trusts or powers therein contained, or otherwise, then and in either of the said cases the money which shall be received for or produced by the same, and all and every the stocks, funds, or other securities whereupon such money shall be laid out or invested, and the dividends, interest, and other proceeds thereof, shall at all times and from time to time be and remain subject to and bounden by these presents, and the several clauses, provisos, and agreements herein contained, in like manner in all respects as the dividends, interest, proceeds, and premises hereinbefore assigned, are or is subject to and bounden thereby. AND further, that if the dividends, interest, and proceeds hereby assigned, or intended so to be, or those which shall or may be substituted in their room, shall at any time become or be insufficient to answer and pay the whole of the said annuity or yearly sum of £ by equal half-yearly payments, on the days or times hereinbefore for that purpose mentioned, then and in such case he the said (*grantor*) his heirs, executors, or administrators, shall and will at the request in writing of the said (*grantee*) his executors, administrators, or assigns, invest or cause to be invested in the purchase of three per cent. consolidated bank annuities, or other government funds or securities, such sum or sums of money as together with the dividends, interest, and proceeds hereby assigned, will produce and make up the whole of the said

annuity or yearly sum of £ (1), at the least. **ANNUITIES.**

AND also that he the said (*grantor*) shall and will at any time or times hereafter, at the request of the said (*grantee*) his executors, administrators, or assigns, appear in person at any office or place of insurance (2), within the cities of London or Westminster, and send, or cause to be sent, to any such

Secured on
Money in the
Funds.

Grantor will
appear at in-
surance office.

(1) If the assignment was to a trustee, add power of changing such trustee, and for his indemnity; see *post*, p. 276, Form 14. **Trustee.**

(2) If there be a power in the deed or will under which the grantor claims, for the trustees to change the securities with his consent, add here,

“AND moreover that he the said (*grantor*) doth hereby expressly declare, order, direct, and appoint that they the said (*trustees*) in the said recited indenture of settlement named, or the survivors or survivor of them, or the executors or administrators of such survivor, shall not at any time or times hereafter during the natural life of him the said (*grantor*) sell, transfer, or dispose of the aforesaid sum of £ three per cent. consolidated bank annuities, in pursuance or by virtue and in exercise of the said power or authority to them in that behalf given, limited, or reserved in and by the said recited indenture of settlement as aforesaid, without the special licence and consent of the said (*grantee*) his executors, administrators, or assigns, first had and obtained for that purpose, but from the exercise or execution of the said power or authority for and during the natural life of him the said (*grantor*) without such the licence and consent of the said (*grantee*) his executors, administrators, or assigns, as aforesaid, he doth expressly discharge, suspend, and prohibit the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor by these presents; any power, authority, or direction, or other matter or thing whatsoever in the said indenture contained in any wise notwithstanding.”

Declaration
that trustees
of the stock
shall not change
securities with-
out consent.

ANNUITIES.

Secured on
Money in the
Funds.

Grantor will not
leave the king-
dom without
notice.

Will pay extra
premium.

office or place, notice in writing of his place of abode, and sufficient vouchers or certificates of his being alive, his age, and the state of his health, for the purpose of enabling the said (*grantee*) his executors, administrators, or assigns, to insure any sum or sums of money upon the life of him the said (*grantor*) if he or they shall think proper so to do. AND that he the said (*grantor*) shall not nor will at any time after such assurance shall be effected leave the United Kingdom of Great Britain or Ireland, without giving unto the said (*grantee*) one calendar month's previous notice thereof, at the least, nor do or cause to be done any other act or thing whatsoever, whereby the policy or policies of or for any such insurance shall or may be or become vacated or annulled, or otherwise prejudicially affected in any manner howsoever. AND in case the said (*grantee*) his executors, administrators, or assigns, shall be required to pay any extra premium or charge for effecting or continuing any such assurance, by reason of the said (*grantor*) leaving the said united kingdom, or other his act or omission, he the said (*grantor*) his executors or administrators, shall and will from time to time as often as the same shall happen, well and truly pay or cause to be paid unto him or them, within the space of days then next thereafter, all such extra charge as the said (*grantee*) his executors, administrators, or assigns, shall pay or be liable to pay on account thereof, and in default thereof the same shall be chargeable upon and payable

out of the dividends, interest, proceeds, and pre-
 mises expressed to be hereby assigned, and reco-
 verable in like manner as the said annuity or
 yearly sum of £ intended to be hereby
 granted or secured (1). [AND the said (*grantor*)
 doth hereby covenant and declare that he the said
 (*grantor*) was on the day of last, of the
 age of years, and no more, was born in the
 parish of in the county of and now is
 of good and insurable health and constitution,
 and will at all times hereafter during his life, and
 that his executors or administrators upon his de-
 cease, if and when thereunto required, shall and
 will make or cause to be made due and sufficient
 proof by authenticated certificates, affidavits, or
 other evidence, of the truth and correctness of the
 declaration and covenant herein contained in re-
 lation thereto, in order that the said (*grantee*) his
 executors, administrators, and assigns, shall or
 may receive and recover all and every sum or
 sums which he or they shall or may have insured
 upon the life of him the said (*grantor*) (2).] AND

ANNUITIES.

Secured on
 Money in the
 Funds.

Grantor is of
 certain age, &c.

(1) If the annuity be secured by the transfer of stock to
 trustees, add a proviso for appointing new trustees on death,
 &c. as *post*, p. 276.

Money trans-
 ferred to trus-
 tees.

(2) Here may be added, if so agreed, as *post*, p. 281, and
 likewise,

Grantor will not
 grant other an-
 nuities.

“AND further, that he the said (*grantor*) shall not nor
 will at any time or times hereafter during the subsistence of
 the said annuity of £ hereby granted, grant, cove-
 nant, or agree to pay to any person or persons whomsoever

ANNUITIES.

*Secured on
Money in the
Funds.*

WHEREAS it hath been agreed that execution shall not be issued on the judgment to be con-

any annuity or annuities, nor assign or in any way charge the said trust funds and dividends, in any manner howsoever, without the consent of the said (*grantee*) his executors, administrators, or assigns in writing under his or their hand or respective hands had and obtained for that purpose. AND in case the said (*grantor*) shall notwithstanding the covenants hereinbefore contained grant or secure any such annuities or annuity, that then and in such case it shall be lawful for the said (*trustee*) his executors, administrators, or assigns, and they are hereby expressly authorised and empowered to receive and take all and every the interest, dividends, and annual proceeds of the said sum of £ , and when and as the same shall be so received invest and lay out the surplus thereof, or so much thereof as he shall think fit, after deducting and retaining the said annuity hereby granted, and all arrears thereof, and all expenses incurred by the purchase of three per cent. Bank annuities, or on real or other government securities, in the name of the said in the books of the governor and company of the Bank of England, and stand possessed thereof in trust, from time to time to accumulate into a fund for better securing the payment of the said annuity or yearly sum of £ hereby granted, under and upon such trusts as the counsel in the law of the said (*grantee*) his executors, administrators, or assigns shall advise for that purpose; and in the meantime thereout from time to time by sale thereof, or of a competent part thereof, or by the dividends thereof, to pay and satisfy all arrears of the said last mentioned annuity at and when the same shall accrue, and all costs, charges, and expenses attending the said annuity; and on the decease of the said (*grantor*), or redemption of the said annuity, and satisfaction of all arrears, costs, charges, damages, and expenses, and other payments made in relation to the said annuity as aforesaid, then upon trust for the said (*grantor*) his executors, administrators, or assigns."

fessed and entered up against the said (*grantor*) in pursuance of the said in part recited warrant of attorney, until such default shall be made in payment of the said annuity, as hereinafter is mentioned. Now THIS INDENTURE FURTHER WITNESSETH, and it is hereby declared and agreed, by and between the parties to these presents, that any judgment which shall be entered up in pursuance of the said in part recited warrant of attorney shall be and be considered as a collateral or further security only, for the payment of the said annuity or yearly sum of £ , at the times and in the manner hereinbefore mentioned for that purpose, and that no execution shall be issued or taken out upon or by virtue of the said judgment, unless and until the said annuity or some half yearly payment thereof shall be in arrear for the space of twenty-one days next after some or one of the days whereupon the same is appointed to be paid, as aforesaid; but that when and so often as the said annuity or yearly sum shall be so in arrear and unpaid, it shall be lawful for the said (*grantee*) his executors, administrators, and assigns to sue out such execution for the arrears thereof, together with costs, and such extra premium or insurance money (if any) as aforesaid, notwithstanding the said judgment shall have been entered on record for the space of one year or upwards, or the said (*grantor*) shall be then dead, and the said judgment shall not have been revived or kept on foot, and that he the said (*grantor*)

ANNUITIES.

Secured on
Money in the
Funds.

FURTHER
WITNESS,
that execution
shall not be
sued out until
annuity in ar-
rear.

ANNUITIES.

*Secured on
Money in the
Funds.*

WHEREAS it hath been agreed that execution shall not be issued on the judgment to be con-

any annuity or annuities, nor assign or in any way charge the said trust funds and dividends, in any manner howsoever, without the consent of the said (*grantee*) his executors, administrators, or assigns in writing under his or their hand or respective hands had and obtained for that purpose. AND in case the said (*grantor*) shall notwithstanding the covenants hereinbefore contained grant or secure any such annuities or annuity, that then and in such case it shall be lawful for the said (*trustee*) his executors, administrators, or assigns, and they are hereby expressly authorised and empowered to receive and take all and every the interest, dividends, and annual proceeds of the said sum of £ , and when and as the same shall be so received invest and lay out the surplus thereof, or so much thereof as he shall think fit, after deducting and retaining the said annuity hereby granted, and all arrears thereof, and all expenses incurred by the purchase of three per cent. Bank annuities, or on real or other government securities, in the name of the said in the books of the governor and company of the Bank of England, and stand possessed thereof in trust, from time to time to accumulate into a fund for better securing the payment of the said annuity or yearly sum of £ hereby granted, under and upon such trusts as the counsel in the law of the said (*grantee*) his executors, administrators, or assigns shall advise for that purpose; and in the meantime thereout from time to time by sale thereof, or of a competent part thereof, or by the dividends thereof, to pay and satisfy all arrears of the said last mentioned annuity at and when the same shall accrue, and all costs, charges, and expenses attending the said annuity; and on the decease of the said (*grantor*), or redemption of the said annuity, and satisfaction of all arrears, costs, charges, damages, and expenses, and other payments made in relation to the said annuity as aforesaid, then upon trust for the said (*grantor*) his executors, administrators, or assigns."

fessed and entered up against the said (*grantor*) ANNUITIES.
in pursuance of the said in part recited warrant
of attorney, until such default shall be made in
payment of the said annuity, as hereinafter is
mentioned. Now THIS INDENTURE FURTHER WIT-
NESSETH, and it is hereby declared and agreed, by
and between the parties to these presents, that
any judgment which shall be entered up in pur-
suance of the said in part recited warrant of at-
torney shall be and be considered as a collateral
or further security only, for the payment of the
said annuity or yearly sum of £ , at the times
and in the manner hereinbefore mentioned for
that purpose, and that no execution shall be
issued or taken out upon or by virtue of the said
judgment, unless and until the said annuity or
some half yearly payment thereof shall be in arrear
for the space of twenty-one days next after some
or one of the days whereupon the same is ap-
pointed to be paid, as aforesaid; but that when
and so often as the said annuity or yearly sum
shall be so in arrear and unpaid, it shall be lawful
for the said (*grantee*) his executors, administrators,
and assigns to sue out such execution for the ar-
rears thereof, together with costs, and such extra
premium or insurance money (if any) as aforesaid,
notwithstanding the said judgment shall have been
entered on record for the space of one year or
upwards, or the said (*grantor*) shall be then dead,
and the said judgment shall not have been re-
vived or kept on foot, and that he the said (*grantor*)

Secured on
Money in the
Funds.

FURTHER
WITNESS,
that execution
shall not be
sued out until
annuity in ar-
rear.

ANNUITIES.

*Secured on
Money in the
Funds.*

**FURTHER
WITNESS,**
power for
grantor to re-
purchase the
annuity.

his heirs, executors, or administrators shall not nor will have, take, or receive, or attempt to derive any advantage for want of the said judgment having been revived or kept on foot, or by reason of any other defect or omission in respect thereof; and if he or they shall endeavour or attempt so to do, this present agreement shall and may be pleaded and shown in bar thereto, and be and operate as an effectual bar to the same accordingly, any rule or practice of the court in which such judgment shall have been entered up to the contrary, in any wise notwithstanding. AND WHEREAS on the treaty for the purchase of the said annuity, it was agreed that the said (*grantor*) should at any time hereafter, [or from and after the end of years from the date hereof,] be at liberty to repurchase the same, at the sum of £ , upon giving six calendar months previous notice in writing thereof, or paying one half year's annuity in lieu of such notice. NOW THIS INDENTURE ALSO FURTHER WITNESSETH, that in pursuance of the said last mentioned agreement, he the said (*grantee*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, declare, and agree, with and to the said (*grantor*) his heirs, executors, and administrators, that in case the said (*grantor*) shall at any time hereafter, [or after the said day of , which will be in the year ,] give or cause to be given unto the said (*grantee*) his executors, administrators, or assigns, six calendar

months notice in writing under his hand, of his desire to repurchase the said annuity or yearly sum of £ , (such notice being made to expire on some or one of the aforesaid half yearly days for payment thereof) or in lieu of such notice, shall pay unto him or them the sum of £ , being one half year's payment of the same annuity or yearly sum, and do and shall at the expiration of such notice, or on such payment in lieu thereof as aforesaid, well and truly pay or cause to be paid (1) unto him the said (*grantee*) his executors, administrators, or assigns, the sum of £ , of lawful current money of England, together with all arrears (if any) of the said annuity, up to and including the day of the expiration of the said notice or payment in lieu thereof, together with all such costs and charges as shall have been incurred by reason of any default or delay in payment of the same, or any such extra premium or insurance money as aforesaid; He the said (*grantee*) his executors, administrators, and assigns, shall and will accept of and receive the said sum of £ as and for the repurchase of the said annuity or yearly sum, and upon payment thereof shall and will at the request, costs, and charges of the said (*grantor*) assign, transfer, and release all and singular the said bank annuities, dividends, interest, funds, and securities hereby

ANNUITIES.

Secured on
Money in the
Funds.

(1) If it be agreed that the repurchase of the annuity shall be by transfer of stock, see *ante*, No. II. p. 68, n. (96). Transfer of
stock.

ANNUITIES.

*Secured on
Money in the
Funds.*

made chargeable with the payment thereof, and deliver up these presents, and the said recited bond and warrant of attorney, (unless the same shall have been then filed), and all other securities given for the said annuity, unto the said (*grantor*) his executors, administrators, or assigns, and acknowledge or cause to be acknowledged satisfaction on the record of the judgment, which may have been entered up on the said bond, and do, and cause to be done, every or any other act, deed, matter, or thing necessary, expedient, or advisable, for effecting any or either of the ends or purposes last aforesaid, or for assigning or transferring the said annuity and securities unto any other person or persons, in such manner and form as the said (*grantor*) [his heirs, executors, or administrators,] or his [or their] counsel in the law, being of the degree of a barrister, shall reasonably advise or require, [so as for the doing thereof, the said (*grantee*) his executors, administrators, or assigns, or his or their trustee be not compelled or compellable for the doing thereof, to go or travel from his or their place or respective places of abode, without a reasonable and sufficient sum being paid or secured to him, her, or them, for or in respect of his, her, or their time, trouble, and expenses (1).]

Title deeds.

(1) If the deed of settlement be not delivered over, add covenant to produce it, as *ante*, p. 183 and 242.

Trustees.

If the dividends be assigned to a trustee or trustees, add as *post*, p. 276, rider (A).

If the trustees of the will or settlement are to be directed not to change the securities, see p. 276, *ante*, pp. 177, and 267, n. (2). **ANNUITIES.**

*Secured on
Money in the
Funds.*

For various other provisos, &c. to be added where requisite, see *ante*, p. 84, *et seq.* and *post*, pp. 276, 278, 284. **Provisos, &c.**

. If the money in the funds upon which the annuity is secured, be transferred into the names of trustees for the annuitant, and the annual dividends be also equal to the annuity, the deed need not be memorialized; but if the stock be not actually transferred for this particular purpose, but be standing in the names of trustees of a marriage settlement or the like, it will require enrolment, notwithstanding such annual amount of the dividends, and see 53 Geo. III. c. 141, s. 10; *ante*, p. 73; also *ante*, **Introduction.** **Memorial.**

ANNUITIES.

*Secured on
Money in the
Funds.*

(A.) Variation *where the Dividends, &c. are assigned to a Trustee or Trustees.* See *ante*, p. 274.

Trustees will
apply the divi-
dends according
to the trusts.

Power to ap-
point new
trustees.

Indemnity to
trustees.

“AND it is hereby agreed and declared by and between the parties to these presents, and particularly by the said (*trustees*) so far as they lawfully may or can, and at the request and by the direction of the said (*grantor*) and his wife, testified by their being parties to these presents, do hereby declare and agree, that they the said (*trustees*) and their executors, administrators, and assigns, shall and will pay, apply, and dispose of the said several sums of money, interest, dividends, and annual produce, and other the premises hereby assigned or assured, as and when the same shall be received by them, upon the trusts, and to and for the intents and purposes hereinbefore expressed and declared of and concerning the same. PROVIDED always, and it is hereby further declared and agreed by and between the parties hereto, that in case the said (*trustee*) [or trustees, or either of them] or any other trustees or trustee to be named or appointed as hereinafter is mentioned, shall depart this life, or be desirous to be discharged from the execution of the aforesaid trusts, then and in such case it shall be lawful for the said (*grantee*) his executors, administrators, or assigns, from time to time, and as often as there shall be occasion, to nominate and appoint some other fit person [or persons] to be a trustee [or trustees] in the room of the trustee [or trustees] so dying or desiring to be discharged; and when and as often as any such trustee [or trustees] shall be so nominated, the said dividends, interests, and proceeds shall be assigned or transferred to such new trustee [or trustees] upon the trusts hereinbefore declared, and with the same or like powers, authorities, and indemnifications, in all respects, as if he[or they] had been originally appointed a trustee [or trustees] by these presents. [AND it is hereby also expressly declared and agreed by and between the said (*grantor*) and (*grantee*) that the said (*trustee*) (or *trustees*) or other the said trustee

or trustees for the time being, shall not be answerable or ANNUITIES.
accountable for each other in any respect whatsoever, but
shall be answerable and accountable for such sum and sums
of money only as shall from time to time actually come or
be paid or given into his or their hand or respective hands
in pursuance of the assignment or trusts aforesaid, nor shall
he or they be answerable for any involuntary loss or losses
which shall or may happen to the said several monies, or
any part thereof.] IN WITNESS, &c.

*Secured on
Money in the
Funds.*

ANNUITIES.

*Secured on
Money in the
Funds.*

(B.) Variation *where there are several Grantees.* See
ante, p. 251, n. (1).

Recital of con-
tract for pur-
chase.

Witness, the
grantor in con-
sideration, &c.

“AND WHEREAS the said (*grantor*) hath contracted with the said (*grantees*) for the sale to them of a clear annuity, or yearly sum of £ for the life of the said (*grantor*) upon the terms and conditions hereinafter mentioned, at the price or sum of £ . And upon the treaty for the purchase of the said annuity it was agreed that the same should be secured by these presents, and by the warrant of attorney of the said (*grantor*) but with such power on the part of the said (*grantor*) for the extinguishment of the said annuity and securities as hereinafter is expressed. AND WHEREAS the said (*grantees*) have requested that the said annuity may be granted to the said (*trustee*) upon the trusts hereinafter declared concerning the same. Now THIS INDENTURE WITNESSETH, that in pursuance and in part performance of the said agreement, and for and in consideration of the sum of £ of lawful and current money of that part of the United Kingdom of Great Britain and Ireland called England, to the said (*agent*) [*if so*] as the agent and solicitor of the said (*grantor*) in hand well and truly paid by the said (*another agent*) [*if so*] at or immediately before the sealing and delivery of these presents, on the part and behalf of the said (*grantees*) in the manner following (that is to say) as to the sum of £ being one moiety thereof as agent for, and with the money of the said (*one of the grantees*) and as to the sum of £ residue thereof, as the agent for, and with the money of the said (*other grantee*) being the full consideration money for the purchase of the said annuity, the receipt whereof the said (*grantor*) doth hereby acknowledge, and thereof and therefrom doth acquit, release, and for ever discharge the said (*grantees*) and each of them, and their respective executors, administrators, and assigns, He the said (*grantor*) HATH granted, bargained, and sold, and by these presents DOTH at the instance and request and on

the nomination of the said (*grantees*) testified by their severally being parties to these presents, grant, bargain, sell, and confirm unto the said (*trustee*) his executors, administrators, and assigns, for and during the term of the natural life of him the said (*grantor*) one annuity or clear yearly sum of £ of such lawful and current money as hereinbefore is mentioned, free and clear of and from all taxes and deductions whatsoever, and to be charged and chargeable upon, and had, received, and taken by and out of ALL and singular the dividends, interest, or annual produce and proceeds of the said sum of £ bank annuities, whereto the said (*grantor*) is entitled for his life, under or by virtue of the hereinbefore in part recited indenture of settlement (and which said sum of £ is now invested in the names of the said and as hereinbefore is recited) and upon and out of all, every, or any trust monies, funds, or securities, which may arise or be produced by or from any alteration, variation, or transposition of the said bank annuities, or trust fund, or any part thereof, under the power or authority in the said indenture of settlement contained concerning the same. TO HAVE, hold, receive, take, and enjoy the said annuity, or clear yearly sum of £ unto and by the said (*trustee*) his executors, administrators, and assigns, for and during the life of the said (*grantor*) to be payable and paid in the manner following (that is to say) the sum of £ (*a fractional part of the annuity*) as for and being a due proportion thereof, computed from the day of the date hereof, to be paid on the day of (*the next quarterly day of payment*) next ensuing the date of these presents, and thenceforth and thereafter by even and equal payments of the said entire annuity, or yearly sum of £ in each and every year (that is to say) the sum of £ on the day of , the day of , the day of , and the day of , in every year, and the same to be made without any deduction or abatement whatsoever, and the first half yearly payment thereof to be made on the day of now next ensuing, and a proportionate part of the said annuity to be

ANNUITIES.

Secured on
Money in the
Funds.

Grants, &c. an
annuity to
trustee.

To hold for life
of grantor.

First payment
of fractional
part up to next
quarter day,

and then by
equal quarterly
payments.

ANNUITIES.

*Secured on
Money in the
Funds.*

FURTHER
WITNESS,
grantor assigns
dividends to
said trustee.

To HOLD to
trustee, upon
trust for better
securing an-
nuity, &c.

Surplus to
grantor.

paid in the event of the decease of the said (*grantor*) before or between any of the said days of payment, up to and immediately after such decease. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and execution of the said in part recited agreement on the part of the said (*grantor*) and for the considerations aforesaid [and in consideration of five shillings of lawful money aforesaid, to the said (*grantor*) in hand paid by the said (*trustee*) at or immediately before the execution of these presents, the receipt whereof is hereby acknowledged,] He the said (*grantor*) (at the instance and request, and on the nomination and by the direction and appointment of the said (*grantees*) testified as aforesaid) HATH bargained, sold, assigned, transferred, and set over, and by these presents DOth bargain, sell, assign, transfer, and set over, unto the said (*trustee*) his executors, administrators, and assigns, ALL and singular the dividends, interest, annual produce and proceeds hereinbefore charged, or intended so to be charged, with the payment of the said annuity of £ and all the right, title, interest, trust, property, claim, and demand whatsoever, both at law and in equity, of him the said (*grantor*) in or to the same. To HAVE, HOLD, receive, take, and enjoy the said dividends, interest, annual produce, proceeds, and premises hereinbefore assigned, or otherwise assured, or intended so to be, unto and by him the said (*trustee*) his executors, administrators, and assigns, UPON TRUST and for the purpose of further and better securing the payment of the said annuity, and such proportionate part thereof as aforesaid, in the manner and at the times hereinbefore expressed, and for securing all and every further and other sum and sums of money, extra premium or premiums for insuring the life of the said (*grantor*) costs, charges, damages, and expenses which shall or may at any time or times hereafter, be or become due and payable to the said (*trustee*) his executors, administrators, or assigns, under or by virtue of these presents, or any thing herein contained, or the warrant of attorney hereinbefore mentioned, or the judgment to be entered up thereupon. And as to the residue thereof, IN TRUST for, or to pay to, or permit

the same to be received by the said (*grantor*) and his assigns, to and for his and their own use and benefit, but subject nevertheless as hereinafter is expressed. AND, &c. (*power of attorney to trustee to receive the dividends, &c.*) (1). AND the said (*grantor*) doth, &c. (*covenant by grantor with trustee to pay the annuity*) (2). AND FURTHER that he the said (*grantor*) shall and will from time to time, and at all times hereafter, during the continuance of the said annuity, make known his place of residence to the said (*trustee*) his executors, administrators, and assigns. AND shall not nor will at any time hereafter, during the continuance of the said annuity, leave the United Kingdom, or go beyond the seas without giving to him or them as early notice thereof as may be. AND shall and will from time to time, and at all times hereafter, when thereunto requested by him or them by letter or notice in writing to be delivered to or left for him at his usual place of abode, (as also in the event of his preparing to go beyond the seas as aforesaid, then without being so requested) personally and gratuitously appear and attend at such office or offices of life insurance, within the cities of London or Westminster, or the liberties thereof, as he may be so requested to attend, to enable the said (*grantees*) or either of them, or the said (*trustee*) or either of their executors, administrators, and assigns, to insure the sum of £ or any part thereof, in one or more sum or sums of money, upon the life of him the said (*grantor*) and to renew or continue any such insurance, and make true answers unto all questions which shall be put to him for that purpose. AND also shall and will once at the least in every year, during the time of any his residence beyond the seas, at his own costs and charges, procure and cause to be delivered due and satisfactory certificates of his being alive and of the state of his health. AND also shall from time to time on demand pay or cause to be paid to the said (*grantee*) his executors, administrators, or assigns, all such extra pre-

ANNUITIES.

Secured on
Money in the
Funds.

Grantor will
make known his
place of re-
sidence.

Will not leave
the kingdom
without notice.

Will appear at
life insurance
office on re-
quest.

(1) See *ante*, p. 257.

(2) See *ante*, p. 258.

Power of at-
torney.
Covenant to
pay.

ANNUITIES.

Secured on
Money in the
Funds.

Grantor will pay
all costs attend-
ing the annuity.

Power of re-
purchase.

mium or expense on or in respect of any insured sum, not exceeding the sum of £ as he or they shall or may be required to pay or be put unto by reason of his the said (*grantor's*) being so beyond the seas (1). AND shall not nor will do any act or thing whereby or by means or reason whereof any policy or policies of insurance which may have been, or may hereafter be effected as aforesaid, shall or may become impeached, or void or voidable. AND further, that he the said (*grantor*) his executors, administrators, or assigns, shall and will well and duly pay, bear, and sustain all charges or expenses attending the negotiating the said annuity hereby granted, and preparing and effecting the securities for the same, and inrolling a memorial thereof, and all costs, charges, and expenses whatsoever, which may be incurred in, about, or relative to the same annuity, or which shall or may at any time or times hereafter be incurred in obtaining payment of any arrear or arrears of the same annuity, or with relation to the said dividends, or in preventing the transfer, if requisite so to do, or in otherwise protecting the interest of the said (*grantees*) in the trust funds so hereby charged with the payment of the said annuity, and shall and will save the said (*trustee*) his executors, administrators, and assigns, and every of them respectively, harmless and indemnified therefrom. AND further, that, &c. (*covenant by grantor that he has not incumbered the dividends; is entitled thereto; hath a right to assign and charge the same; and for further assurance; and will not revoke the power of attorney; execution on judgment if annuity in arrear twenty-one days*) (2). AND further, that he the said (*grantor*) shall be at liberty at any time hereafter to repurchase the said annuity by giving to the said (*trustee*) his executors, administrators, or assigns, three calendar months previous notice thereof, and upon the expiration of such notice paying to him or them the full and just sum of £ and on paying also, in either of the

(1) See also and add, if thought requisite, as *ante*, p. 269, and *ib. n.* (2).

(2) See *ante*, p. 262.

said cases, to him or them a due proportion of the current year's premium of any insurance which the said (*grantees*) or either of them, or the said (*trustee*) their or either of their executors, administrators, or assigns, shall or may have effected upon the life of the said (*grantor*) not exceeding as to any such insured sum, the sum of £ according to the period for and during which the same shall have to run or be unexpired, whether the same shall have been effected for the term of the whole life or for any number of years only, and paying also unto him or them all arrears of the said annuity, and also if so repurchased before or between any of the said days of payment a proportionate part of the said annuity computed up to and inclusive of the day of repurchase. AND further, that in case any such repurchase as aforesaid shall be made, the said annuity shall from thenceforth cease to be payable by virtue of these presents, or the said warrant of attorney, or any thing therein or herein contained, and thereupon the said warrant of attorney shall be delivered up to be cancelled, (unless filed) or otherwise satisfaction shall be entered upon the judgment which shall or may be entered up by virtue thereof, and the said dividends hereinbefore assigned (save and except as to any disposition which shall or may theretofore have been made thereof under or by virtue of these presents, shall be re-assigned to and at the request and cost of the said (*grantor*) and his assigns. AND it is hereby agreed and declared by and between the said (*trustee*) and (*grantees*) that the said (*trustee*) his executors, administrators, and assigns, shall stand and be possessed of the said annuity of £ and the proportionate part thereof aforesaid, and also of the money (if any) to be paid for the repurchase of the same annuity, UPON TRUST for the said (*grantees*) their respective executors, administrators, and assigns, as tenants in common, in equal shares and proportions. And that no benefit of survivorship shall be had or claimed by them or either of them the said (*grantees*) or either of their executors, administrators, or assigns, in respect of the said annuity, or any proportionate part thereof, or the money to be paid for the repurchase of the same."

ANNUITIES.

Secured on
Money in the
Funds.

On repurchase,
annuity, &c. to
cease.

Trustee to be
possessed of an-
nuity in trust
for grantees
equally.

And no survi-
vorship between
them.

ANNUITIES.

*Secured on
Money in the
Funds.*

(C.) *Variations where the Annuity is granted by a Feme Covert out of Bank Annuities settled to her separate Use. See ante, p. 248, n. (1).*

Recital of will bequeathing interest of money to feme for her separate use, or to her appointment.

“ AND WHEREAS (*the testator*) of, &c. by his last will and testament in writing, bearing date on or about the day of , which was in the year of our Lord , amongst other bequests therein contained, gave and bequeathed the sum of £ unto (*trustees*) therein respectively described, Upon trust that they the said (*trustees*) and the survivor of them, and the executors and administrators of such survivor, should from time to time lay out and invest and continue the said sum of £ upon government, mortgage, or other real securities, with the approbation and consent of the said (*grantor*) during her life. But nevertheless, upon the trusts and for the intents and purposes therein and hereinafter expressed and declared of and concerning the same, that is to say, Upon trust, that they the said (*trustees*) their executors, administrators, and assigns, should from time to time pay the dividends and interest thereof when and as the same should be received, to such person or persons, upon such trusts, and to and for such ends, intents, and purposes, as the said (*grantor*) by any writing or writings under her hand, should, notwithstanding coverture, and as if she was sole and unmarried, direct and appoint, and for want of such direction or appointment, into the proper hands of her the said (*grantor*) for her sole, separate, and peculiar use and benefit, exclusive of, and without the same being subject to, the debts, control, forfeiture, disposal, or engagements of her husband. AND it was thereby declared that the receipts of the said (*grantor*) or of such person or persons as she might appoint to receive the said dividends, and interest, or any part thereof, re-

spectively, should be from time to time good and sufficient discharges to the said (*trustees*) and their executors, administrators, and assigns, for so much money as should therein be expressed or acknowledged to be received. AND the said (*testator*) appointed the said (*grantor*) sole executrix of his said will. AND whereas the said (*testator*) afterwards departed this life without revoking or altering his said will, and the same was duly proved by his said executrix in the Prerogative Court of the Archbishoprick of Canterbury. AND whereas the said sum of £ hath been invested in the purchase of £ three per cent. bank annuities by, and is now standing in the names of the said (*trustees*) upon and for the trusts and purposes in or by the said in part recited will directed concerning the same. AND whereas the said (*grantee*) hath contracted and agreed with the said (*grantor*) for the absolute purchase of an annuity or yearly sum of £ during the life of the said (*grantor*) at or for the sum of £ , to be charged and chargeable upon, and to be issuing out of and from the yearly interest, dividends, and proceeds of the said sum of £ three per cent. bank annuities, to which the said (*grantor*) is so entitled to for her life, under or by virtue of the said recited will of the said (*testator*) deceased. NOW THIS INDENTURE WITNESSETH, that for the consideration aforesaid, and for the better and more effectually assigning and assuring unto the said (*grantee*) his executors, administrators, and assigns, the said annuity or yearly sum of £ during the natural life of the said (*grantor*) she the said (*grantor*) in pursuance and in exercise of all and every of the powers and authorities hereby vested in her by the said hereinbefore in part recited will, and of any other power and authority to her in that behalf given or vested, doth hereby expressly order, direct, and appoint that they the said (*trustees*) their executors, administrators, and assigns, do and shall from thenceforth during the natural life of her the said (*grantor*) well and truly pay or cause to be paid unto the said (*grantee*) [or (*trustee*)] his executors, administrators, and assigns, all and every the dividends and proceeds of the said sum of £ three per cent. bank annuities, when

ANNUITIES.

*Secured on
Money in the
Funds.*

Contract for purchase of annuity by feme covert.

WITNESS,
feme appoints
the dividends,
&c.

ANNUITIES. and as the same shall be received or come to their hands by
virtue of the trusts contained in the said hereinbefore re-
cited will of the said (*testator*) deceased; but nevertheless
upon the trusts and to and for the ends, intents, and pur-
poses hereinbefore mentioned, expressed, and declared of
and concerning the same. And the said (*grantor*) doth
hereby," &c. (*power of attorney to the grantee or his trustee
to receive the dividends; covenants of title, &c.*) (1).

Letter of attor-
ney, &c.

(1) See *ante*, p. 257, *et seq.*

ANNUITIES.

*Secured on
an Office, &c.*

No. IX.

Grant of Annuity secured on the Fees of an Office (1).

Variation where the Security is a Pension, &c.

THIS INDENTURE, made the day of ,
in the year of the reign, &c. and in the year
of our Lord . BETWEEN (*the grantor*) of, &c.
 , of the first part, (*the grantee*) of, &c. , of
the second part, and (*the trustee*) of, &c. a trustee
named and appointed by and on the behalf of the
said (*grantee*) for the purposes hereinafter men-
tioned, of the third part. WHEREAS by a deed poll, Recital of ap-
pointment to
the office.
or instrument in writing, under the hand and seal
of, &c. (*as the case may be*), bearing date on or
about the day of , in the year , the
said was appointed, and holdeth and en-
joyeth the situation or office of, &c. during
the term of his natural life, and to have, take, and
receive all such customary fees, poundages, per-
quisites, and emoluments as have been heretofore

(1) As to what offices, &c. are assignable, see *ante*, Vol. V. What offices
assignable.
p. 190, n. (2); also *Davis v. D. of Marlborough*, 2 Swans. 122.

If, however, the office be connected with the administration
of justice, or an office of personal trust, and not merely mini-
sterial, it must be considered to be not assignable, *Ex parte*
Cossens in re Worrall, 1 Buck, 541; and see *Palmer v. Bate*, 2
Brod. and Bingham, 673.

ANNUITIES.

*Secured on an
Office, &c.*

Contract for
purchase of
annuity.

Warrant of
attorney.

WITNESS, in
consideration,
&c. grantor
grants annuity.

received and enjoyed as incident or appurtenant to the said office. AND WHEREAS the said (*grantor*) hath contracted and agreed with the said (*grantee*) for the sale to him of a clear annuity or yearly sum of _____, for the life of him the said (*grantor*) in consideration of the sum of £ _____, and it hath been agreed that the said annuity shall be secured by the bond and warrant of attorney of the said (*grantor*), and also be chargeable upon and issuing out of the fees, perquisites, and emoluments of the said office, and also by an assignment thereof to the said (*trustee*) upon the trusts hereinafter expressed. AND WHEREAS in part performance of the said agreement, the said (*grantor*) hath this day executed a bond or obligation in writing, under his hand and seal, in the penal sum of £ _____, and also a warrant of attorney empowering certain attornies therein named to confess judgment against him thereupon in an action of debt in the Court of Common Pleas at Westminster, at the suit of the said (*grantee*) in or as of this _____ term, or of any subsequent term, for the sum of £ _____ and costs of suit. Now THIS INDENTURE WITNESSETH, that in further pursuance of the said agreement, and for and in consideration of the sum of £ _____ (1) of lawful and current money of that part of the United Kingdom of Great Britain and Ireland called England to the

Consideration.

(1) If the consideration be other than money paid at the time of the execution of the deed, see *ante*, p. 75, *et seq.*

said (*grantor*) in hand well and truly paid by the said (*grantee*) at the time of the sealing and delivery of these presents, the receipt of which said sum of £ is hereby acknowledged by the said (*grantor*) and of and from the same and every part thereof, he the said (*grantor*) doth acquit, release, and for ever discharge the said (*grantee*) his executors, administrators, and assigns by these presents, He the said (*grantor*) HATH given, granted, bargained, and sold, and by these presents DOTH give, grant, bargain, and sell unto the said (*grantee*) his executors, administrators, and assigns, [to and for his and their own use and benefit,] one annuity or clear annual sum of £ of lawful and current money of that part of the United Kingdom of Great Britain and Ireland called England, to be issuing and payable, and had; received, and taken out of and from, and charged and chargeable upon ALL and singular the fees (1), perquisites, and emoluments hereinafter particularly described or mentioned. To HAVE, hold, receive, perceive, take, and enjoy the said annuity or yearly sum of £ unto

ANNUITIES.

*Secured on
an Office, &c.*

To be issuing
out of the said
office.

To hold for
life of grantor.

(1) If the annuity be granted out of a pension or the like, say, Pension, &c.

“ All that the said pension, stipend, gratuity, or annual sum of £ so granted or given to him the said (*grantor*) for the term of his natural life as aforesaid.”

If out of an exchequer or government annuity,

Government
annuity.

“ All that the said annuity or yearly sum of £ so payable to him the said (*grantor*) his executors, &c. for the term of years as aforesaid.”

ANNUITIES.

*Secured on
an Office, &c.*

and by him the said (*grantee*) his executors, administrators, and assigns, from the date of these presents, for the term of the natural life of the said (*grantor*) and up to the day of his decease, the said annuity to be payable at the said office of, &c. by four equal quarterly payments (that is to say) the day of , the day of , the day of , and the day of , in every year, and also a just proportion thereof in respect of any period which may happen between either of the said days of payment and the day of the decease of the said (*grantor*) the first proportional part of the said annuity to be paid on the day of now next ensuing, if the said (*grantor*) shall be then living, but if not, then within one calendar month next after his decease. AND the said (*grantor*) doth for himself, &c. (*covenant to pay the annuity*) (1). AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid [and in consideration of ten shillings, &c.] he the said (*grantor*) HATH granted, bargained, sold, assigned, transferred, and set over, and by these presents BOTH grant, bargain, sell, assign, transfer, and set over unto the said (*trustee*) his executors, administrators, and assigns, ALL and singular the fees (2), perquisites, emoluments, benefits, and advantages whatever, belonging or payable to or demandable by the

FURTHER
WITNESS,
grantor assigns
fees, &c. of the
office.

(1) See *ante*, p. 253.

Pension, &c.

(2) If the assignment be of a pension or the like, see *ante*, p. 289, n. (1).

said (*grantor*) by virtue or in right of his said office or appointment of, &c. and all and every the powers and remedies both at law and in equity of him the said (*grantor*) for recovering, receiving, or enforcing payment of the same, and all the estate, right, title, interest, property, claim, and demand, both at law and in equity, of him the said (*grantor*) of, in, or to the same. To HAVE AND TO HOLD the said fees (1), perquisites, emoluments, and premises hereinbefore assigned or otherwise assured, or intended so to be, unto and by him the said (*trustee*) his executors, administrators, and assigns, during the natural life of him the said (*grantor*); But nevertheless upon and for the trusts and purposes hereinafter declared or expressed concerning the same. AND the said (*grantor*) &c. (*Power of attorney to receive, &c.*) (2). AND it is hereby agreed and declared by and between the parties to these presents, that the fees, perquisites, emoluments, [or pension, &c.] and premises hereinbefore assigned or otherwise assured to the said (*trustee*) his executors, administrators, and assigns, or intended so to be, have been and are so assigned or otherwise assured to him and them, and that the same and every of them shall from time to time and at all times hereafter be by him and them holden, received, taken, and retained, UPON THE TRUSTS, and

ANNUITIES.

Secured on
an Office, &c.

Trusts of as-
signment.

(1) If the assignment be of a pension or the like, see *ante*, p. Pension, &c. 289, n. (1).

(2) See *ante*, pp. 181. 257.

Letter of attorney.

.ANNUITIES.

*Secured on
an Office, &c.*

to and for the ends, intents, and purposes following (that is to say) (*add trusts, &c. &c. as ante* (1), *substituting* “fees, perquisites, and emoluments,” or “pension or stipend” (*as the case may require*), *instead of* “dividends, interest, and proceeds.”
IN WITNESS, &c.

Trusts, &c.

(1) See *ante*, p. 261.

Provisos, &c.

. See various provisos, &c. to be added where requisite, *ante*, p. 84, *et seq*

ANNUITIES.

To two or more.

No. X.

Grant of an Annuity to several Persons for their Lives as Tenants in common (1), chargeable upon Freehold Premises.

Variations where the Annuity is granted during the Life of the Grantor, or the Lives of Nominees, or for Years determinable with a Life or Lives.

Also where the Premises by which the Annuity is secured are Copyhold or Leasehold.

Also where Money in the Funds, &c. &c. as in margin below (2).

THIS INDENTURE, made the day of
in the year of the reign, &c. , and in the

(1) The circumstance of two persons (as sisters or the like) joining in the purchase of an annuity to augment a small income is so frequent that I have thought it right to insert a separate form of an assurance for securing such an annuity, notwithstanding the variations subjoined to the preceding form.

(2) See notes and variations to Vol. I. No. XXIX. p. 458, *ante*, No. II. p. 10, *et seq.*

If the grantor be tenant in tail, see *ante*, No. II. margin Tail. "tail," and No. IV. p. 137.

If tenant for life, see *ante*, No. II. margin "life," and No. V. Life. p. 167.

If the premises, upon which the annuity is secured, be copyhold, see *ante*, No. II. margin "copyhold," and No. VI. p. 184.

If leasehold, see *ante*, No. VII.

If money in the funds, *ante*, No. VIII.

Copyholds.

Leaseholds.
Money in the funds.

ANNUITIES. year of our Lord . BETWEEN (*the grantor*)
 of, &c. of the first part, (*the grantees*)
To two or more. of, &c. of the second part, and (*trustees*)
 of, &c. (being trustees appointed by and
 on the behalf of the said (*grantees*) respectively
 for the purposes hereinafter mentioned) of the
 third part. WHEREAS, &c. (1). AND WHEREAS
 the said (*grantor*) hath contracted (2) with the
 said (*grantees*) for the sale to them of an annuity
 or yearly sum of £ , for their joint natural
 lives (or the lives of (*nominees*) of, &c. if so,) and
 the life of the longest liver of them, at or for the
 price or sum of £ , be paid by the said
 (*grantees*) in equal proportions (or as the case may
 be), and who are to be entitled to the said annuity
 in like proportions, as tenants in common, AND
 whereas the said (*grantees*) have requested that
 the said annuity and the securities for the same
 may be respectively paid and given to the said
 (*trustees*) as trustees for them respectively, in the

Subject to
mortgage.

(1) Recite the title or seisin of the grantor, as *ante*, No. II. p. 12, adding, if the premises are in mortgage,

“ Subject only to a mortgage in fee made thereof, by the said (*grantor*) to (*the mortgagee*) of, &c. for securing the sum of £ , and with interest at the rate of £ per cent. per annum, by indentures of lease and release, bearing date respectively on or about the and days of , and made, or expressed to be made between the said (*grantor*) of the one part, and the said (*mortgagee*) of the other part.”

Prior agree-
ment.

(2) If the annuity be granted in pursuance of a prior agreement in writing, see *ante*, No. II. p. 13, n. (†).

manner hereinafter expressed. AND WHEREAS, ANNUITIES.
 for securing the payment of the said annuity of To two or more.
 £ , the said (*grantor*) hath by a writing Recital of war-
 (1) under his hand and seal bearing even date rant of attorney.
 with these presents, authorised attorneys
 of his Majesty's Court of Common Pleas at
 Westminster, jointly and severally, or any other
 attorney of that court, by confession or other-
 wise, to suffer judgment to be entered up against
 him in the said court in an action of debt for
 money had and received, at the suit of the said
 (*trustees*) for the sum of £ , (*double*
the purchase money) and costs of suit, and
 judgment is intended to be forthwith entered up
 against the said (*grantor*) by virtue of the said
 warrant of attorney; and upon the treaty for the
 sale and purchase of the said annuity, it was
 agreed that the same should be further secured
 by the covenant, conveyance, and provisions
 hereinafter contained, and also that the said an-
 nuity might be repurchased upon the terms here-
 inafter mentioned in that behalf. Now THIS IN-
 DENTURE WITNESSETH, that in pursuance of the
 said agreement, and in consideration of the sum
 of £ of, &c. (2) to the said (*grantor*) in
 hand well and truly paid by the said (*grantees*)
 in equal moieties or half parts immediately before

WITNESS,
 Covenant to pay
 the annuity.

(1) If a bond be also given, see *ante*, No. II. p. 14, n. (8), Bond.
 and p. 17, n. (14).

(2) If the consideration be other than money paid down at Consideration.
 the time of the execution of the deed, see *ante*, No. II. p. 75,
et seq.

ANNUITIES.

To two or more.

the execution of these presents, the receipt whereof the said (*grantor*) doth hereby acknowledge, [and of and from the same, and every part thereof, doth by these presents acquit, release, and for ever discharge the said (*grantees*) and each of them, their and each of their executors, administrators, and assigns,] He the said (*grantor*) at the instance and request, and with the privity, consent, and approbation of the said (*grantees*) testified by their severally signing and sealing of these presents, doth hereby for himself, his heirs, executors, and administrators, covenant and agree (1) with the said (*trustees*) their executors, administrators, and assigns, that he the said (*grantor*) his heirs, executors, or administrators, shall or will from time to time, and at all times hereafter, during the lives of the said (*grantees*) (2) and the life of the longest liver of them, well and truly pay or cause to be paid unto the said (*trustees*) their executors, administrators, or assigns, at or in the common dining hall of the Inner Temple, London, one annuity or yearly sum of £ of lawful and current money of that part of the United Kingdom of Great Britain and Ireland called England, and shall or will pay the said annuity.

Grant.

(1) The grant of the annuity with distress and entry are, it will be perceived, here omitted, and see *ante*, p. 147, n. (1); but if an insertion of them be preferred, see *ante*, pp. 19. 24.

Life of grantor, &c.

(2) If the annuity be granted during the life of the grantor, see *ante*, No. II. p. 21, *et seq.*

Nominees.

If during the lives of nominees, see *ibid.* notes, margin "nominees."

by even and equal quarterly portions on the day of , the day of , the day of , and the day of , in every year between the hours of two and four of the clock in the afternoon of the same days respectively, without any deduction or abatement whatsoever, whether by authority of parliament or otherwise howsoever, and shall and will make the first payment of the said annuity on the day of now next ensuing, if the said (*grantees*) or either of them shall be then living, and in case the survivor of them shall die between or in the interval of any two of the said quarterly days of payment, and either before or after the said day of next, then [the said (*grantor*) his heirs, executors, or administrators, shall and will also well and truly pay or cause to be paid unto the said (*trustees*) their executors, administrators, or assigns,] such part of the said annuity of £ as shall be in proportion to the time or number of days which, inclusive of the day of the decease of such survivor, shall have elapsed prior to his decease, and after the day of payment next, and immediately preceding that event, or next after the day of the date of these presents (as the case may require), and shall and will pay such proportional part of the said annuity, immediately after the decease of the survivor of the said (*grantees*) and demand made thereof. AND THIS INDENTURE ALSO WITNESSETH, that for the better and more effectually securing the payment of the said annuity or yearly sum of

ANNUITIES.

To two or more.

FURTHER
WITNESS,
Conveyance of
premises to
trustees.

ANNUITIES. £ , and for the considerations hereinbefore
To two or more. expressed [and also in consideration of the sum
 of ten shillings of lawful money current of Great
 Britain, to the said (*grantor*) well and truly paid
 by the said (*trustees*) immediately before the exe-
 cution of these presents, the receipt whereof is
 hereby acknowledged,] HE the said (*grantor*) (at
 the request, and by the direction and appoint-
 ment of the said (*grantees*) testified in the man-
 ner aforesaid,) HATH granted, bargained, sold,
 and released (1), and, by these presents, DOTH
 grant, bargain, sell, and release unto the said
 (*trustees*) and their heirs, ALL that, &c. and all
 houses, &c. (which said hereditaments and pre-
 mises are now in the actual possession of them the
 said (*trustees*) by virtue of a bargain and sale for
 a year to them thereof made by the said (*grantor*)
 by indenture bearing date the day next before the
 date hereof,) and the reversion and reversions, &c.
 and all the estate, &c. (2). **TO HAVE AND TO HOLD**
 the said messuage, lands, hereditaments, and all
 and singular other the premises hereby released

To hold to the
 said trustees in
 fee.

Trustee.

(1) If the estate is in the grantor and a trustee, under limita-
 tion to prevent dower, see *ante*, No. II. p. 28, n. (38).

Wife.

If the wife of the grantor be entitled to dower, or be other-
 wise interested in the premises, add, as *ante*, No. II. p. 48, n.
 (64), and see *ib.* p. 50, note.

(2) See *ante*, p. 31.

Estate tail.

If the annuity be granted by tenant in tail, see *ante*, p. 142.

Life.

If by tenant for life, *ante*, p. 174.

Copyholds.

If it be secured on copyholds, *ante*, p. 194.

Leaseholds.

If on leaseholds, *ante*, p. 224.

Money in funds.

If on money in the funds, *ante*, p. 255.

or otherwise assured or intended so to be, with **ANNUITIES.**
 their and every of their rights, members, and ap- To two or more.
 purtenants, unto the said (*trustees*) their heirs and
 assigns, to the use of them the said (*trustees*) their
 heirs and assigns for ever; BUT nevertheless upon
 the trusts (1) and to and for the ends, intents,
 and purposes hereinafter declared or expressed
 concerning the same (that is to say) UPON TRUST
 for better securing to the said (*trustees*) their exe-
 cutors, administrators, and assigns, the due and
 regular payment of the said annuity or yearly sum
 of £ hereby covenanted to be paid to them
 as aforesaid. AND upon this further trust, that
 in case and when and as often as the same annuity,
 or any quarterly payment thereof, shall be in ar-
 rear and unpaid by the space of forty days next
 after any one of the days or times hereinbefore
 appointed for payment thereof, they the said
 (*trustees*) and the survivor of them and the heirs,
 executors, and administrators of the survivor, and
 their or his assigns, do and shall by and out of
 the rents and profits of the said hereditaments and
 premises hereby released or otherwise assured or
 intended so to be, or by mortgage thereof, or of
 a competent part thereof, or by bringing actions
 against or making distresses upon all or any of
 the present or future tenants of the said heredi-
 taments and premises for recovery of the rents
 then in arrear, or by making entries upon the

Upon trust if
 annuity forty
 days in arrear
 to pay arrears
 out of rents or
 by mortgage.

(1) If the security be by way of use, see *ante*, p. 147, marg. *. Use.

ANNUITIES.To two or more.

Further trust if
annuity sixty
days in arrear
to sell.

same hereditaments and premises, or by all or any one or more of the said ways or means, or by any other lawful ways and means whatsoever, raise and levy such arrears of the said annuity or yearly sum of £ as from time to time shall become due and remain unpaid, together with all such damages, costs, charges, and expenses as the said trustees or trustee, their or his heirs, executors, administrators, or assigns, or any or either of them, shall incur, expend, or be put unto by reason of the nonpayment thereof, or in anywise concerning the execution of the trusts of these presents. AND upon this further trust, that in case the said annuity or yearly sum of £ , or any part thereof, shall be in arrear and unpaid by the space of sixty days next after any one of the days or times hereinbefore appointed for payment of the same (1), they the said trustees or trustee, their or his heirs or assigns, of their or his own proper authority, and without any consent or concurrence of the said (*grantor*) his heirs or assigns, do and shall make sale and absolutely dispose of the said messuages, lands, and heredita-

Subject to mort-
gage.

(1) If the premises be in mortgage, add,

“ Or in case the payment of all or any part of the said principal sum of £ or the interest thereof, so secured upon the said premises by way of mortgage as aforesaid, shall be demanded of the said (*trustees*) their heirs or assigns, and paid by them, and the money so paid shall not be repaid by the said (*grantor*) his heirs, executors, administrators, or assigns, within the space of three calendar months next after notice thereof shall be given to him or them.”

ments hereby released or otherwise assured or intended so to be, and the fee-simple and inheritance thereof, either by public auction or by private contract as they or he shall think fit (1), and convey the same when sold unto the person or persons who shall agree to become the purchaser or purchasers thereof, and to his, her, or their heirs and assigns, or as he or they shall appoint. **AND** upon this further trust, that they the said trustees or trustee respectively, and their respective heirs or assigns, do and shall by and out of the rents and profits of the said messuages, lands, and hereditaments, if any shall have been received by him or them, and by and out of the money which shall arise by or from any such mortgage, sale, or other means aforesaid, in the first place (2), deduct, retain, satisfy, and pay unto and for themselves respectively, the costs, charges, and expenses of or attending the execution of the trusts hereby reposed in them, and also (3) all sums (if any) which

ANNUITIES.

To two or more.

And apply the purchase money in satisfying costs and arrears of the annuity..

(1) If the premises be in mortgage, add,

Mortgage.

“And either subject to or discharged from the said mortgage.”

(2) If the premises are in mortgage, add,

Mortgage.

“If they shall think proper apply the whole or a competent part of the money arising from the said sale in discharge of the principal and interest which shall be then due upon the aforesaid mortgage or security.”

(3) If the premises are in mortgage, add,

Mortgage.

“After satisfying and discharging, if he or they shall think proper, all or any part of the said mortgage debt of £ and interest.”

ANNUITIES.To two or more.

Further trust to invest the residue in government securities for keeping down future arrears.

they shall disburse, expend, or be put unto for repairs of the said premises, or in insuring the buildings thereof against loss or damage by fire, or in or about any suit or suits at law or in equity for obtaining possession of the said hereditaments, or any part thereof (1), or enforcing the performance of any contract or contracts to be entered into with any person or persons who shall agree to become a mortgagee or purchaser of the said hereditaments or any part thereof; and in the next place do and shall retain and pay the said annuity or yearly sum of £ , or such part thereof as shall be then in arrear and unpaid (2).

AND upon this further trust, that they the said trustees or trustee, their or his heirs or assigns, after paying and retaining the said several sums of money, costs, charges, disbursements, and expenses, do and shall invest the residue of the money to arise by any of the means aforesaid in their or his names or name in the purchase of three per cent. consolidated or other bank or government annuities, and stand possessed thereof, upon trust by and out of the dividends, interest, and proceeds of the same, and also by sale from time to time, if necessary, of a competent part

Mortgage.

(1) Or (if the premises be in mortgage),
“ In redeeming the said mortgage.”

Mortgage.

(2) If the premises are in mortgage, add,
“ And also so much, if any, of the said principal money and interest as shall have been paid by them.”

Annuity.

If subject to a subsisting annuity, see *ante*, p. 38, *et seq.* margin “ annuity.”

of the said annuities, to raise and retain the said annuity or yearly sum of £ , or such part thereof, as from time to time shall be in arrear and unpaid, and the costs, charges, and expenses attending the same. AND upon this further trust, that in the mean time and until the said annuity or yearly sum of £ , or some quarterly payment thereof shall be in arrear or unpaid in the whole or in part for the times hereinbefore mentioned (1), and also from time to time when and as often as all arrears of the said annuity or yearly sum, and the said costs, charges, and damages and expenses shall be raised or fully satisfied and paid to the said trustees or trustee, their respective heirs, executors, or administrators, do and shall permit and suffer the said (*grantor*) his heirs, executors, administrators, or assigns, to receive and take the rents and profits of the same hereditaments and premises, or the dividends, interest, and income of the bank or government annuities to be purchased as aforesaid, to and for his and their own use and benefit. AND upon this further trust, that subject to the payment of the said annuity or yearly sum of £ (2) as afore-

ANNUITIES.

To two or more.

Further trust to permit the grantor to receive the surplus.

Further trust (subject as aforesaid) for the grantor and his heirs, &c.

(1) If the premises are in mortgage, add,

Mortgage.

“ Or until such default shall be made in payment of the said principal sum of £ and interest, or some part thereof.”

(2) If the premises are in mortgage, add,

Mortgage.

“ And also the said sum of £ and the interest thereof.”

ANNUITIES.

To two or more.

Receipt of
trustees to be
a good dis-
charge.

said, the said trustees or trustee, their or his heirs, executors, administrators, or assigns, do and shall stand and be seised of the said messuages, lands, and hereditaments hereby released, or otherwise assured or intended so to be, or stand and be possessed of the said bank or government annuities to be purchased as aforesaid, and the dividends, interest, and income thereof, upon trust for the said (*grantor*) his heirs, executors, administrators, and assigns, according to the nature of the same hereditaments and property respectively, and upon or for no other trust, intent, or purpose whatsoever. AND it is hereby provided, declared, and agreed by and between the parties to these presents, as far as they are respectively interested, and the said (*grantor*) doth hereby direct and appoint, and the said (*grantees*) do hereby agree that the person or persons who shall pay to the said (*trustees*) their heirs, executors, administrators, or assigns, (or unto such of them as shall be the only acting trustees or trustee for the time being under the aforesaid trusts) all or any part of the rents or annual profits of the said messuages, lands, and hereditaments hereby released, or otherwise assured or intended so to be, or pay or advance any money for any purchase or purchases, or upon any mortgage or mortgages of the same premises or any part thereof, or otherwise, in pursuance of the trusts hereinbefore declared, shall not be obliged or required to see to the application of the same respectively, or of any part thereof, nor to ascertain whether any such

sale or sales, mortgage or mortgages, is or are necessary for all or any of the purposes hereinbefore mentioned, or the said annuity or any part thereof, is then or was theretofore in arrear, nor be answerable or accountable for the misapplication or non-application of the said rents, profits, or monies respectively, or any part thereof, and that the receipts which shall be given by the said acting trustees or trustee for the time being under these presents, their or his heirs, executors, administrators, or assigns, [for all or any part of the said rents, profits, and money respectively,] shall be good and sufficient acquittances and discharges for the sum and sums of money which by the said receipts shall be acknowledged or expressed to be, or have been received. AND the said (*grantor*) doth, by these presents, for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said (*trustees*) their heirs and assigns, in the manner following (that is to say) that, &c. (*add usual covenants for the title, &c.*) (1). AND it is hereby declared and

ANNUITIES.

 To two or more.

Covenants for
 the title.

No execution
 to issue unless,
 &c.

(1) See *ante*, p. 48.

If the premises consist partly of houses or other hereditaments, add, after the covenant for further assurance,

Repairs and
 insurance.

“ THAT he the said (*grantor*) his executors, and administrators, or some or one of them, shall and will from time to time, and at all times so long as the said annuity shall continue payable out of the premises intended to be hereby granted and released as aforesaid, at his or their own

ANNUITIES.

To two or more.

agreed by and between the said parties to these presents, as far as they respectively are interested, that [the said warrant of attorney and the judgment to be entered up by virtue thereof, and also these presents are respectively given, in consideration of one and the same sum of £ and not in consideration of or for securing two several sums of £ and for securing one and the same annuity of £ and not for securing several annuities of £ and that] no execution or executions shall be

expense well and effectually maintain, support, and keep in repair all and every the messuages or tenements and buildings mentioned or intended to be hereby granted and released as aforesaid, with the appurtenants, when and where, and as often as need or occasion shall require, and without delay insure from loss or damage by fire, and at all times during the same time or period continue to keep so insured in such one of the public offices for insurance from fire, in the said city of London or Westminster, as the said (*trustees*) their heirs or assigns shall direct, the same messuages or tenements and buildings, in the joint names of the said (*trustees*) or their assigns, and the said (*grantor*), in the sum of £ at the least, and that the whole of the money to be recovered and received, under or by virtue of any such insurance, shall without delay be laid out and expended, under and subject to the direction and inspection of the said (*trustees*) their heirs or assigns, or their surveyor, in rebuilding or reinstating (as the case may require) the messuages or tenements and buildings which shall or may be destroyed or damaged by fire."

See also *ante*, No. II. p. 97 ; or the policy may be assigned as *post*, p. 312.

issued or taken out upon the judgment to be entered up as aforesaid, unless or until the whole or a part of some quarterly payment of the said annuity of £ shall be in arrear by the space of thirty days. And also that after the decease of the survivor of them the said (*grantees*) (1) and full payment to the said (*trustees*) their executors, administrators, or assigns, of the said annuity of £ and all the arrears thereof up to the day of the decease of such survivor, they the said (*trustees*) their heirs, executors, administrators, or assigns, shall and will, on the request and at the costs and charges of the said (*grantor*) his heirs, executors, administrators, or assigns, acknowledge satisfaction upon the record of the said judgment in due form of law, and do any further or other act, matter, or thing which may be reasonably required for releasing and extinguishing all right and remedy under the said judgment, and all executions thereupon, so as for doing thereof they the said (*trustees*) their executors, administrators, or assigns, shall not be compelled or compellable to travel from the place or places of their then residence or places of abode. AND, &c. (*add usual clauses as to entering up judgment, &c.*) (2). PROVIDED al-

ANNUITIES.

To two or more.

Power for grantor to repurchase the annuity.

(1) If the annuity be granted during the life of the grantor, see *ante*, p. 64. Life of grantor.

(2) See *ante*, p. 62, and if judgment is not to be entered up until default, see *ante*, p. 114, rider (L). Judgment.

If the annuity be granted for the life of the grantor only, add Insurance. covenant to appear at an insurance office, &c. as *ante*, p. 59.

ANNUITIES.

To two or more.

ways, [and it is hereby expressly declared and agreed by and between the parties to these presents, as far as they are respectively interested, and it is the true intent and meaning of them and of these presents,] that in case the said (*grantor*) his heirs, executors, administrators, or assigns, shall at any time hereafter be desirous of repurchasing the said annuity of £ (1), and shall give to the said (*trustees*) their executors, administrators, or assigns, seven days notice in writing of such his or their desire, and upon the expiration of the said notice, shall well and truly pay or cause to be paid unto the said (*trustees*) their executors, administrators, or assigns, the sum of £ and also all and every sum and sums of money which shall be then due and owing to them, for or on account of the said annuity of £ and also a proportional part of the said annuity up to and inclusive of the day or time of paying the said sum of £ then the said warrant of attorney, unless filed, shall be delivered up to be cancelled, and satisfaction shall be acknowledged on the record of the judgment, if any, which may have been entered up by virtue thereof, and if the said (*grantor*) his heirs, executors, administrators, or assigns, do and shall also well and truly pay to the said (*trustees*) their heirs, executors, administrators,

Moieties.

(1) If it be agreed that the annuity shall be purchased by moieties or the like, see *ante*, No. II. p. 66, n. (95).

or assigns, all and every sum or sums of money **ANNUITIES.**
which shall be then due to the said (*trustees*) their To two or more.
executors, administrators, or assigns, for or on
account of such costs, charges, and expenses,
as shall have been advanced, paid, or incurred by
him or them in the execution of the trusts hereby
reposed in them, or in or about recovering or
enforcing the payment of the said annuity of
£ when in arrear, then and in that case the
said (*trustees*) their heirs, executors, administra-
tors, or assigns, shall and will accept and take the
said sum of £ as and for the price of the
repurchase, and in satisfaction and full discharge
of the said annuity of £ and on the request,
and at the costs and charges of the said (*grantor*)
his heirs, executors, administrators, or assigns,
shall or will release the same annuity and (subject
only to any mortgage made under the trusts here-
inbefore declared) reconvey the messuages, lands,
and hereditaments hereby released, or otherwise
assured or intended so to be, or such and so many
of them as shall remain unsold unto the said
(*grantor*) his heirs or assigns, or as he or they
shall direct, or as the case shall require shall
transfer unto the said (*grantor*) his executors, ad-
ministrators, or assigns, the bank or other an-
nuities to be purchased as aforesaid, or such part
thereof as shall remain undisposed of under the
trusts aforesaid, and then and from thenceforth
the several covenants and agreements hereinbefore
contained for the payment of the said annuity of
£ shall become void and of none effect.

ANNUITIES.To two or more.

Trustees to be
possessed of
annuity for
grantees
equally.

Covenant to
produce title
deeds.

PROVIDED always, and it is hereby declared by the said (*trustees*) with respect to the said annuity of £ hereby granted to them as aforesaid, or expressed or intended so to be, that the same is granted to them in trust for the sole benefit of the said (*grantees*) and not of them the said (*trustees*) or either of them (1). AND it is hereby also declared and agreed by and between the said (*trustees*) and also the said (*grantees*) that the said (*trustees*) their executors, administrators, and assigns, shall stand and be possessed of the said annuity of £ and also the money to be paid for the repurchase thereof, in case the same shall be repurchased, IN TRUST as to one equal half part thereof for each of them the said (*grantees*) his executors, administrators, and assigns, and that no benefit of survivorship shall be had or taken by either of them, their or his executors, administrators, or assigns, in respect of the said annuity or any part thereof, or the money to be paid for the repurchase of the same or any part thereof. AND the said (*grantor*) doth hereby further covenant and declare, in manner and form aforesaid, that he the said (*grantor*) or his heirs, shall and will, at his or their expense, at the request of the said (*trustees*) their executors, administrators, or assigns, produce and show forth, or cause and procure to be produced and shown forth unto them the said (*trustees*) their heirs or

Variation.

(1) See a varied form, *ante*, pp. 71, 80, and 82, *in notis*.

assigns, or unto their or any of their counsel, **ANNUITIES.**
solicitors, or agents, as well the said in part re- To two or more.
cited indenture of settlement of the said
day of as also all other the title deeds
relating to the hereditaments hereby released, or
otherwise assured or intended so to be, for a pe-
riod of sixty years now last past, for the purpose
of enabling them to recover the said annuity of
£ and to exercise and perform the trusts
and agreements of these presents (1) for that
purpose or otherwise. PROVIDED always, &c.
(add power of appointing new trustees, and clauses
of indemnity) (2). IN WITNESS, &c.

(1) If the grantees be a company of proprietors not incor- Company.
porated, see *post*, p. 313, rider (B).

(2) See *ante*, p. 276.

Trustees.

. See various provisos, &c. to be added where required, *Provisos, &c.*
ante, No. II. p. 75, *et seq.*

ANNUITIES.

Grantor to two
or more.

(A) Variation where the Grant is to an Assurance Company; and an Assurance against Fire is made by the Grantor with the Grantees. See *ante*, p. 305.

Assignment of
fire policy.

“AND WHEREAS the said (*grantor*) hath caused the messuages or tenements and other buildings mentioned or intended to be hereby granted and released as aforesaid, to be insured against loss by fire in or with the said insurance office, or company of proprietors, for the term of years, from the day of instant, for the sum of £ as by a certain deed poll or policy of assurance, bearing date, &c. and numbered reference being thereunto had will appear, and it has been agreed by and between the parties hereto, that the said (*grantor*) shall assign the same unto the said (*trustees*) in trust, as hereinafter mentioned. NOW THIS INDENTURE FURTHER WITNESSETH, &c. (*Assignment of policy to the trustees*) (1). To have and to hold, receive, take, and enjoy the policy of insurance hereby assigned or intended so to be, and all and every the sum and sums of money at any time or times, and from time to time to become due upon or by virtue of the same, and all and every other benefit and advantage to be had or derived therefrom, either at law or in equity, unto and by them the said (*trustees*) their executors, administrators, and assigns, In trust nevertheless, for the said insurance company, and the several proprietors thereof, and to be disposed of from time to time as the directors for the time being of the same company shall direct.”

(1) See *ante*, No. II. p. 92.

ANNUITIES.

*Grantor to two
or more.*

(B) Variation by Way of Addition where the Grantees are a Company of Proprietors. See ante, p. 310, n. (1).

“AND the said (*grantor*) for himself, his heirs, executors, and administrators, doth hereby further covenant and declare with and to the said (*trustees of the company*) their executors, administrators, and assigns, that he the said (*grantor*) his heirs, executors, administrators, or assigns, or any person or persons lawfully or equitably claiming or to claim, by, from, or under him or them, shall not nor will at any time after default shall be made in payment of the said annuity or yearly sum of £ or any part thereof, contrary to the true intent and meaning of the covenant hereinbefore contained in that behalf, or the condition of the said in part recited bond, plead in abatement, demur to, or otherwise defeat, or seek or attempt to defeat, or impede, or in any other way or manner take or avail himself or themselves of any advantage which may or might be had or taken either at law or in equity, in, to, or against any ejectment, or other action, suit, or proceeding whatsoever, at law, in equity, or otherwise, which shall or may at any time hereafter be commenced or carried on against him or them by or on the behalf of the said company for payment of the said annuity, or yearly sum of £ or of any part of the same, by reason or on account of any such action, suit, or proceeding being instituted or carried on in the names of the said (*trustees*) their executors, administrators, or assigns, or of the treasurer, directors, trustees, or other member or members, or agent or agents only for the time being of or for the said company, without all and every or any other of the several officers or members thereof, or persons interested therein, being made parties to or named in any such ejectment, bill, action, suit, pleadings, or proceedings, any law, usage, or practice of any court wherein such proceedings may be had to the contrary in anywise

Grantor will not
avail himself of
misnomers, &c.

ANNUITIES.

*Grantor to two
or more.*

Change of pro-
prietors not to
affect the se-
curity.

notwithstanding. PROVIDED also, and it is hereby further declared and agreed, that if the said company of proprietors shall at any time hereafter during the subsistence of the said annuity, or yearly sum of £ or any arrears thereof, admit any new partner or proprietor, or if any of the present proprietors shall die or withdraw from the same, and the survivors or other of them shall take any new partner or proprietor, or in any other case whatever, where the money to be paid under these presents shall belong to them or any of them, jointly with any other person or persons then in copartnership with them or any of them, that in every such case the annuity, or yearly sum of £ hereby granted, shall be recovered and recoverable by virtue of these presents, in the same or like manner as if the same had been granted to or in trust for such new partners or proprietors in conjunction with the present partners or proprietors, or to or in trust for such new partners or proprietors only, any rule of law or equity to the contrary notwithstanding."

ANNUITIES.

*Secured by
Grant only.*

No. XI.

*Grant of Annuity secured by Grant (1), Bond,
and Warrant of Attorney only.*

Variations where a Surety joins.

THIS INDENTURE, made the day of
[* in the year of the reign, &c. and] in the
year of our Lord . BETWEEN (*the grantor*) Parties.
of, &c. of the one part; and (*the grantee*)
of, &c. of the other part (2). WHEREAS Recital of
the said (*grantee*) hath agreed (3) with the said contract.

(1) The utility of a grant accompanying the bond and warrant of attorney, where no property is assigned by the deed, has been questioned; but as a bond would be barred by the bankruptcy, &c. of the grantor, see *Exp. Granger*, 10 Ves. jun. 351, whilst he would still be bound by the covenant and grant contained in the deed, this additional assurance cannot in all cases be considered as nugatory. Bond to accompany the grant.

* If brevity be particularly desired, those parts within brackets may be omitted throughout the precedent. Brevity.

(2) If there be a surety for the grantor, make him a party of the third part, and if more than one, make each of them of a separate part. Surety.

(3) If the annuity be granted in pursuance of a prior agreement in writing, recite such agreement, as in No. II. p. 13, n. (+). Prior agreement.

ANNUITIES.

*Secured by
Grant only.*

Recital of bond.

Warrant of attorney.

(*grantor*) for the purchase of an annuity, or yearly sum of £ during the life of the said (*grantor*) to be paid at the time and in the manner hereinafter mentioned, at or for the price or sum of £ . AND WHEREAS upon the treaty for the purchase of the said annuity it was agreed that the same should be secured by the bond or obligation of the said (*grantor*) and a warrant of attorney to confess judgment thereon, and also by such grant and other assurances as are contained in these presents. AND WHEREAS in part performance of the said agreement, the said (*grantor*) by his bond or obligation in writing, bearing or intended to bear even date with these presents, hath become bounden unto the said (*grantee*) in the penal sum of £ with a condition thereunder written for making void the same, on payment of the said annuity, or yearly sum of £ on the days, at the times, and in the manner hereinafter and in the said condition mentioned (1). AND hath also executed a warrant of attorney bearing even date with the said bond, empowering certain attornies therein named

Surety.

(1) If there be a surety for the grantor, say,

“ By these presents and several bonds and warrants of attorney of the said (*grantor*) and (*surety*) &c. ; and they the said (*grantor*) and (*surety*) have accordingly by their joint and several bond or obligation, or bonds or obligations in writing, become bounden, &c. with a condition thereunder written for making void the same, if the said (*grantor*) or (*surety*) or either of them, or their or either of their heirs,” &c.

to confess judgment against him (1) in his Majesty's Court of King's Bench at Westminster, in an action of debt upon the said bond for the said sum of £ and costs of suit, [as in and by the said bond and warrant of attorney, reference being thereunto respectively had, will more fully appear.] Now THIS INDENTURE WITNESSETH, that in further performance of the agreement aforesaid, and for and in consideration of the sum of £ (2) of lawful and current money of that part of the United Kingdom of Great Britain and Ireland called England, to the said (*grantor*) in hand well and truly paid by the said (*grantee*) at or immediately before the sealing and delivery of these presents (3) (*or otherwise as the case may be*) (4) [and being the same sum of £ as is mentioned in the condition of the hereinbefore in part recited bond, the receipt of which said sum of £ and that the same is in full for the purchase of the said annuity, or yearly sum of

ANNUITIES.

Secured by
Grant only.

WITNESS,
that in consi-
deration, &c.

(1) If there be a surety, say,

Surety.

“Against them or either of them in,” &c. (*as above*).

(2) If the consideration be paid otherwise than in money, see No. II. p. 75, rider (A). Consideration
how paid.

(3) If a surety join, it is usual (but not necessary) to add a nominal consideration paid to him, as, Surety.

And also in consideration of the sum of five shillings of like money to the said (*surety*) at the same time paid by the said (*grantee*) the receipt whereof is hereby acknowledged.”

(4) If the annuity be granted in pursuance of a prior agreement, and part of the consideration money were paid at the time of the execution of the said agreement, see No. II. p. 75. Prior agree-
ment.

ANNUITIES.

Secured by
Grant only.

The grantor
grants the
annuity.

To hold during
the life of the
grantor.

£ during the life of the said (*grantor*) the said (*grantor*) doth hereby acknowledge, and of and from the same and every part thereof, doth acquit, release, and for ever discharge the said (*grantee*) his executors, administrators, and assigns, by these presents,] He the said (*grantor*) HATH given, granted, bargained, and sold, and by these presents DOTH for himself, his heirs (1), executors, and administrators, give, grant, bargain, and sell (2) unto [and to and for the use of] the said (*grantee*) his executors, administrators, and assigns, one annuity, or yearly sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, of English value and currency. [To HAVE, HOLD, receive, perceive, take, and enjoy the said annuity, or yearly sum of £ hereby granted or expressed, or intended so to be, unto and by him the said (*grantee*) his executors, administrators, and assigns, from the date of these presents, for and during the term of the natural life of the said (*grantor*) and up to the day of his decease, (subject only to such power of repurchase as hereinafter is contained) the said

“Heirs.”

(1) An annuity being regularly chargeable on the person only of the grantor, is considered but a personal interest, although it is to continue during the life of another, and it will not, therefore, bind his heirs, even though they should have assets by descent, unless they be expressly named. Co. Lit. 144, b. n. (2).

Surety.

(2) If a surety join, say,

“They the said (*grantor*) and (*surety*) Have and each of them Hath,” &c.

Covenant by grantor to pay the annuity.

Surety.

“ And they the said (*grantor*) and (*surety*) for themselves jointly and severally, and for their several and re-

ANNUITIES.

*Secured by
Grant only.*

To appear at
insurance office.

strators, doth covenant, promise, grant, and agree to and with the said (*grantee*) his executors, administrators, and assigns, by these presents in the manner following (that is to say) that he the said (*grantor*) shall and will from time to time, and at all times hereafter, during the term of his natural life, well and truly pay or cause to be paid unto the said (*grantee*) his executors, administrators, or assigns, the said annuity or yearly sum of £ at and upon the days and times and in the manner hereinbefore appointed for the payment thereof, and also that the heirs, executors, or administrators of him the said (*grantor*) shall and will in like manner pay or cause to be paid a due proportionable part of the said annuity or yearly sum, from the commencement of any quarter wherein the said (*grantor*) shall happen to die up to and including the day of his death (1). AND moreover, that the said (*grantor*) shall and will, at any time or times hereafter and from time

spective heirs, executors, and administrators, do and each of them for himself, his heirs, executors, and administrators, doth covenant, promise, grant, and agree to and with the said (*grantee*) his executors, administrators, and assigns, by these presents in manner following (that is to say) that they the said (*grantor*) and (*surety*) or one of them, or the heirs, executors, or administrators of one of them, shall and will well and truly pay," &c. *as above*.

Reduction of
annuity.

(1) If it be agreed that the amount of the annuity shall be reduced on punctual payment, see No. II. p. 87, rider (C).

to time, at the request of the said (*grantee*) his executors, administrators, or assigns, (and upon having reasonable notice given to him thereof,) appear in person at any office or place of insurance within the cities of London or Westminster, and also, if and when thereunto required, procure and produce, or cause to be produced unto any such office or offices, notice in writing of his place of abode, together with satisfactory certificates or other documents of his being alive, and of the state of his health, in order that the said (*grantee*) his executors, administrators, or assigns, may insure any sum or sums of money which he or they shall think fit upon the life of him the said (*grantor*), and that in case of any such assurance being made, he the said (*grantor*) [his executors, administrators, or assigns,] shall not nor will do or cause to be done any act or thing whatsoever, whereby the same shall or may be impeached or impeachable, or rendered void or voidable. AND further, that in case the said (*grantor*) shall at any time during the existence of the said annuity leave the United Kingdom of Great Britain and Ireland, so as to occasion the said (*grantee*) his executors, administrators, or assigns, any extra premium or expense in or for effecting or continuing any such assurance or assurances, he the said (*grantor*) in his lifetime, and his executors or administrators upon his decease, shall and will well and truly pay or cause to be paid such extra premium or expense unto the

ANNUITIES.

Secured by
Grant only.

Will pay extra
insurance on
leaving the
kingdom.

ANNUITIES.

Secured by
Grant only.

Judgment to be
a collateral
security only.

said (*grantee*) his executors, administrators, or assigns, upon demand made to him or them thereof. AND WHEREAS it hath been agreed that judgment shall be forthwith confessed and entered up in pursuance of the said in part recited warrant of attorney. Now and it is hereby further declared and agreed by and between the said (*grantor*) and (*grantee*) to be the true intent and meaning of these presents, that any judgment or judgments which shall be so entered up, shall be considered as a collateral security only for the payment of the said annuity or yearly sum of £ , and that no execution shall be issued out thereupon unless default shall be made in payment of the said annuity or yearly sum for the space of twenty-one days next after some or one of the days hereinbefore appointed for payment thereof; but that upon every such default it shall be lawful for the said (*grantee*) his executors, administrators, and assigns, to sue out execution for all arrears of the said annuity or yearly sum, and all costs and damages which shall have been incurred or sustained by reason or means of the non-payment thereof, and that it shall not be necessary for the said (*grantee*) his executors, administrators, or assigns, to revive or cause to be revived the said judgment, nor to do any act, matter, or thing, in order to keep on foot or render the same effective, although the same shall have been entered on record for the space of one year or upwards, or the said (*grantor*) shall be then dead. AND that

he the said (*grantor*) (1) his heirs, executors, or administrators, shall not nor will have, take, or receive any advantage for want of the said judgment having been revived and kept on foot, or by reason of any other defect or omission in respect thereof; and if he or they shall make any endeavour so to do, this present agreement shall and may be pleaded and shown in bar thereto, and be and operate as an effectual bar thereto accordingly; any rule or practice of the court in which any such judgment shall have been entered up to the contrary in any wise notwithstanding (2). PROVIDED ALWAYS, and it is hereby agreed and declared, that from and after the decease of the said (*grantor*) and full payment of all arrears of the said annuity or yearly sum of £ and such

ANNUITIES.

 Secured by
Grant only.

 Proviso for
cessation of
annuity.

(1) If there be a surety, say,

Surety.

“ And that they the said (*grantor*) and (*surety*) or either of them, or the heirs, &c. of either of them, shall not,” &c. as above.

(2) If there be a surety for the grantor, he may be protected from any sudden call for payment, and from the payment of large arrears, owing to the *laches* of the grantee, by a proviso to the following effect:

Surety.

“ Provided always nevertheless, that no execution shall be sued out against the person of the said (*surety*) or his goods or chattels, or other estates or effects whatsoever, until one calendar month's notice in writing under the hand or hands of the said (*grantee*) his executors, administrators, or assigns, shall be given to him the said (*surety*) his executors, &c. or left at his or their last or usual place of abode, of the said annuity or yearly sum of £ or some part

ANNUITIES.

*Secured by
Grant only.*

Power of re-
purchase.

proportionable part thereof as aforesaid, and all costs, charges, damages, and expenses in any wise relating to the premises, he the said (*grantee*) his executors, administrators, or assigns, shall and will at the request, and at the costs and charges of the said (*grantor*) his heirs, executors, or administrators, acknowledge or cause to be acknowledged satisfaction to be entered up on the record of the said judgment. AND the said (*grantor*) doth hereby further covenant, promise, and agree with and to the said (*grantee*) his executors, administrators, and assigns, in the manner aforesaid, that he the said (*grantor*) his heirs, executors, or administrators, shall and will at any time or times hereafter, at the reasonable request and at the costs and charges in all things of the said (*grantee*) his executors, administrators, or assigns, make, do, and execute all or any such further and other acts, deeds, matters, and things whatsoever, for the better or more satisfactorily granting and securing the said annuity, according to the true intent and meaning of these presents, unto the said (*grantee*) his executors, administrators, and assigns, as he or they, or his or their counsel shall advise. AND WHEREAS upon the treaty for the purchase of the said annuity, it was agreed by and be-

thereof being in arrear, nor at any time for any greater portion of the said annuity or yearly sum than one half year's payment thereof."

And see *English v. Darby*, 2 Bos. and Pul. 62; *Eyre v. Bartrop*, 3 Madd. 221, and cases there cited; also *ante*, INTRODUCTION.

tween the said parties, that the said (*grantor*) (1) **ANNUITIES.**
 should at any time hereafter [*or from and after*
 the expiration of years from the date hereof] Secured by
 be at liberty to repurchase the same (2), upon the Grant only.
 terms hereinafter mentioned. Now THIS INDEN-
 TURE ALSO FURTHER WITNESSETH, that in pur-
 suance of the last-mentioned agreement, he the
 said (*grantee*) for himself, his heirs, executors,
 administrators, and assigns, doth hereby covenant,
 promise, and agree with and to the said (*grantor*)
 his executors and administrators (3), that in case
 the said (*grantor*) shall at any time hereafter [*or*
 after the day of which will be in the
 year] give or cause to be given unto the
 said (*grantee*) his executors, administrators, or
 assigns, six calendar months' previous notice in
 writing under his hand, or in lieu of such notice
 shall pay unto him or them one half year's pay-
 ment of the said annuity and all arrears thereof,
 up to and including the day of the expiration of

(1) If there be a surety for the grantor, say,

Surety.

“ The said (*grantor*) or (*surety*) or either of them.”

And see *post*, p. 328, rider (A).

Transfer of
stock.

(2) If the repurchase be permitted or required to be made
 by a transfer of stock, see No. II. p. 66, n. (92).

(3) If a surety join, say,

Surety.

“ With and to the said (*grantor*) and (*surety*) and each
 of them, and their respective heirs, executors, administrators,
 and assigns, that in case the said (*grantor*) and (*surety*) or
 either of them, or the heirs, executors, administrators, or
 assigns of either of them, shall,” &c. *as above*.

ANNUITIES.

*Secured by
Grant only.*

the said notice, or payment in lieu thereof as aforesaid, being paid up, together with all costs and charges which shall have been incurred by reason of any default or delay in payment of the same, he the said (*grantee*) his executors, administrators, and assigns, shall and will accept of the sum of £ of such lawful and current money as is hereinbefore mentioned (1), as and for the repurchase and extinguishment of the said annuity or yearly sum, and thereupon shall and will at the request, costs, and charges in the law of the (*grantor*) acknowledge or cause to be acknowledged satisfaction on the record of the said judgment, and do and cause to be done every or any other act, deed, matter or thing, necessary, expedient, or advisable for releasing or vacating the said annuity, and the several securities for the same, or otherwise assign or dispose of the same, in such manner and form as the said (*grantor*) or his counsel in the law, being of the degree of a barrister, shall reasonably advise and require (2).
IN WITNESS, &c.

Instalments.

(1) If it be agreed that the grantor shall be at liberty to repurchase the annuity by instalments, see No. II. p. 66, n. (95).

Transfer of stock.

If it be agreed that the repurchase of the annuity shall be by a transfer of stock, see No. II. p. 68, n. (96).

Surety.

(2) If there be a surety, add,

“ Save only and except and provided always, and it is hereby declared and agreed by the said (*grantor*), that in

case the said annuity or yearly sum shall be purchased by ANNUITIES.
and in the name of the said (*surety*) or other person or _____
persons than the said (*grantor*), then and in such case the Secured by
said annuity shall, as against him the said (*grantor*), remain Grant only.
and be in full force and continuance, notwithstanding such _____
repurchase, in trust, or for and to the use and benefit of
the person or persons purchasing the same, and then and in
such case the said annuity or yearly sum and the several
securities for the same annuity shall be assigned, made over,
or assured by the said (*grantee*) his executors, admini-
strators, or assigns, unto him the said (*surety*) his exe-
cutors, administrators, or assigns, or as he or they shall
direct."

And see *ante*, p. 111, and *post*, p. 328, rider (A).

* See various other provisos, &c. to be added where requi- Provisos, &c.
site, *ante*, No. II. p. 84, *et seq.*

ANNUITIES.

*Secured by
Grant only.*

(A.) Variation, *by way of Addition, where a Surety joins with the Grantor.* See *ante*, p. 325, n. (1).

Trusts for be-
nefit of surety.

“ AND WHEREAS it has been agreed by and between the said (*grantor*) and (*surety*) that in case the said (*surety*) should repurchase the said annuity or yearly sum of £ , or should advance the said (*grantor*) any sum or sums for that purpose, the said premises shall become security for the repayment thereof, with interest. NOW THIS INDENTURE FURTHER WITNESSETH, that it is hereby declared and agreed by and between all and every of the parties to these presents, that in case the said (*surety*) his heirs, executors, or administrators, shall at any time hereafter repurchase or redeem the annuity or yearly sum of £ hereinbefore granted or secured as aforesaid, in pursuance or by virtue of the proviso or agreement hereinbefore contained, enabling him in that behalf, or if he the said (*surety*) his heirs, executors, or administrators, shall lend, advance, or pay unto the said (*grantor*) his heirs, executors, administrators, or assigns, any sum or sums of money for or towards that purpose, then, and in every or either of such cases, all and singular the messuages or tenements, lands, hereditaments, and premises hereby made, or expressed, or intended to be made chargeable with the payment of the said annuity or yearly sum of £ shall thenceforth stand and be charged and chargeable with all and every the sum and sums which he, they, or any or either of them shall so lend, advance, or pay, with all costs, charges, damages, and expenses which he or they shall or may sustain or be put unto, by reason thereof, together with interest for the said sum or sums, after the rate of £5 per cent. per annum, from the time of his or their paying or advancing the same until repayment thereof. AND also that he the said (*trustee*) his executors, administrators, and assigns, shall from thenceforth stand possessed of and interested in the same hereditaments and premises for all the then residue of the said term of years

hereinbefore demised, or otherwise assured to him as aforesaid, or intended so to be, or so much of the said premises and term as shall not have been disposed of for the purposes hereinbefore expressed concerning the same, Upon trust for him the said (*surety*) his heirs, executors, and administrators, to and for the end and purpose of securing to him and them the repayment of the said sum or sums, with interest, after the rate aforesaid, with full power and authority for him the said (*trustee*) his executors, administrators, and assigns, to use and exercise, and he and they are hereby expressly authorized, empowered, and directed at all or any time or times, and from time to time, at the request of the said (*surety*) his heirs, executors, or administrators, to use and exercise the same or like powers and authorities of entry, sale, mortgaging, or otherwise disposing of all or any part of the said hereditaments and premises for all or any of the said last mentioned purposes as are hereinbefore given to or vested in him or them for raising and paying the said annuity or yearly sum of £ , when in arrear; and all and whatsoever he the said (*trustee*) his executors, administrators, or assigns, shall or may do or cause to be done for all or any of the last mentioned purposes, he the said (*grantor*) his heirs, executors, and administrators, shall and will ratify, confirm, and allow in all things if and when occasion shall require."

ANNUITIES.

Secured by
Grant only.

And see *ante*, p. 111, rider (K).

ANNUITIES.

*For a Term of
Years.*

No. XII.

*Grant of an Annuity (or yearly Rent-charge), for
a Term of Years, chargeable upon an Estate of
Inheritance, in fee-simple (1).*

*Variations where it is chargeable upon Leasehold pre-
mises.*

Where it is granted to two or more Persons.

Where the Wife of the Grantor is a Party.

Where the Grantor is seised in fee-tail.

Where he took the Estate to himself and a Trustee.

Where part of the Estate is Copyhold.

Where the Premises are in Mortgage.

*Where subject to a former Annuity, &c. &c. as in
Margin below.*

THIS INDENTURE, of parts, made the

Annuity for a
term of years
not usurious.

(1) It has been questioned, whether a deed of this kind for securing the payment of an annual sum of money for a term of years would not amount to an usurious contract under the statute of 12 Ann. c. 16, which declares, "that no person shall take
" directly or indirectly for the loan of any money, wares, &c.
" above the value of £5 for the forbearance of £100 for a year."
But unless there be circumstances attending the transaction which render it in fact and substance a loan of money to be

day of	[*in the	year of the reign,	ANNUITIES.
&c. and]	in the year of our Lord	BE-	<u>For a Term of</u>
TWEEN (<i>the grantor</i>) (1) of, &c.		of the first	<u>Years.</u>
part, (<i>the grantee</i>) of, &c.		of the second	Parties.
part, [and (<i>the trustee</i>) of, &c.		(a trustee	
named and appointed by and on the part of the			
said (<i>grantee</i>) for the purposes hereinafter men-			

returned at a rate of interest exceeding £5 per cent. per annum, under the colour of a *bona fide* purchase of an annuity, I do not perceive any foundation for viewing it in that light; but although a case of this kind cannot, I conceive, be brought under the statute of usury, yet if the circumstances attending the purchase of the annuity be such as to admit of the bargain being considered as unconscionable, or if it be obtained from the grantor at a time when, by reason of extreme embarrassment or other cause, his mind might reasonably be supposed to have lost its power of free agency, it will be liable to the interference of a court of equity. But as the grantee's money is absolutely sunk, (unless at the option of the grantor), the court, it is apprehended, would not be induced to exercise its extraordinary power of cancelling an agreement deliberately entered into by parties of full age and legal competency, unless the circumstances of the case were extremely gross and the bargain unconscionably oppressive.

* Where brevity is particularly desired, those parts of the precedent included within brackets may be omitted. Brevity.

(1) If the wife of the grantor be entitled to dower out of the lands intended to be made chargeable with the payment of the annuity, make her a party. And see No. II. p. 14, *et seq.* marg. Wife.
 "Wife," in notes.

If the grantor took the estate to himself and a trustee, make such trustee a party of the second part. Trustee.

If the grantor be tenant in tail only of the premises intended to be made chargeable with the annuity; make the tenant to the præcipe a party of the second part, and see *ante*, No. IV. Tenant in tail.
 p. 137.

If there be a surety for the grantor, see *ante*, No. II. marg. Surety.
 "Surety," and *ante*, No. XI. *ibid.*

ANNUITIES. tioned) of the third part.] WHEREAS (1) the said
 (grantor) is seised (2) in fee-simple of the here-
 ditaments hereafter described (3). AND WHEREAS
 the said (grantee) hath agreed with the said
 (grantor) for the purchase of an annuity or yearly
 sum of £ , for the term of years, to
 be issuing out of or charged upon the said here-
 ditaments, and also to be secured by the bond or
 obligation (4) of the said (grantor), and a warrant
 of attorney to confess judgment thereon, as herein-
 after is expressed, at or for the price or sum of
 £ . AND WHEREAS, in pursuance of the
 said agreement, the said (grantor) by his bond or
 obligation in writing, bearing even date with these
 presents, hath become bounden for himself and
 his heirs to the said (grantee) his executors, admi-
 nistrators, and assigns, in the penal sum of £ ,
 with a condition thereunder written, for making
 void the same on payment of the said annuity or
 yearly sum of £ , on the days, at the times,

-
- Trustee.** (1) If the grantor took the estate to himself and a trustee for preventing dower, recite here the deed by which it is so limited to him, stating the power of appointment nearly verbatim; and see *ante*, p. 28, n. (38).
- Tenant in tail.** If the grantor be tenant in tail only of the premises, recite here the deed or will by which the estate tail was created; as *ante*, p. 138.
- Leaseholds.** (2) If the annuity be secured upon leasehold premises, recite here the lease, &c. as in *ante*, p. 215.
- Copyholds.** (3) If part of the premises be copyhold, see *ante*, No. II. marg. "Copyholds," in notes, also *ante*, No. VI. p. 184, *et seq.*
- Prior agreement.** If the annuity be granted in pursuance of a prior agreement in writing, see *ante*, No. II. p. 13, n. (†).
- No bond.** (4) If no bond is to be given, see *ante*, No. III. p. 119.

and in the manner therein and hereinafter particularly mentioned. AND hath also executed a warrant of attorney, bearing even date with the said bond, empowering certain attornies therein named to confess judgment against him in an action of debt on the said bond in the court of at Westminster, in or as of term next, or of any subsequent term, for the said sum of £ , together with costs of suit [as in and by the said bond and warrant of attorney, reference being thereto respectively had, will more fully appear.] [And it is intended that judgment shall be forthwith entered up on the said bond by virtue of the said warrant of attorney, but that no execution shall be issued out thereupon until such default shall have been made in payment of the said annuity as hereinafter is mentioned.] Now THIS INDENTURE WITNESSETH, that in pursuance of the agreement aforesaid, and for and in consideration of the sum of £ , of lawful and current money of that part of the United Kingdom of Great Britain and Ireland called England, to the said (*grantor*) in hand well and truly paid by the said (*grantee*), at or immediately before the sealing and delivery of these presents, [being the same sum of £ as is mentioned in the condition of the hereinbefore in part recited bond,] the receipt whereof, and that the same is in full for the purchase of the said annuity or yearly sum of £ , the said (*grantor*) doth hereby acknowledge, [and of and from the same and every part thereof doth acquit, release, exonerate, and

ANNUITIES.

For a Term of
Years.And warrant of
attorney.WITNESS, that
in considera-
tion of the
money paid.

ANNUITIES.

*For a Term of
Years.*

The grantor
grants, &c. the
annuity.

To HOLD to the
grantee for the
term of years.

for ever discharge the said (*grantee*) his executors and administrators, by these presents] HE the said (*grantor*) HATH given, granted, bargained, and sold, and by these presents BOTH for himself, his heirs, executors, and administrators, give, grant, bargain, and sell (1), unto the said (*grantee*) his executors, administrators, and assigns (2), for and during the term of years, to be computed from the day of the date of these presents, one annuity or clear yearly sum of £ of such lawful and current money as hereinbefore is mentioned, to be issuing and payable, and had, received, and taken out of, and from, and charged and chargeable upon ALL and singular the messuages, lands, tenements, and hereditaments hereinafter particularly described, and intended to be hereby granted and demised (3). To HAVE, HOLD, receive, perceive, take, and enjoy, the said annuity or yearly sum of £ hereby granted, or expressed, or intended so to be, [and every part thereof,] unto the said (*grantee*) his executors, administrators, and assigns (4), from the day of

Trustee.

(1) If the estate to be charged with the payment of the annuity be in the grantor and his trustee, and the estate of the trustee be such as to make it requisite that he should concur in the charge, see *ante*, p. 28, n. (38).

Tenants in
common.

(2) If the annuity be granted to two or more persons as tenants in common, see *ante*, No. X.

Copyholds.

(3) If part of the premises be copyhold, add,

“ And covenanted to be surrendered respectively.”

Tenants in
common.

(4) If the annuity be granted to two or more persons as tenants in common, see *ante*, No. X.

the date of these presents, for and during the term of years thence next ensuing, and to be paid and payable at or in the common dining-hall of the Inner Temple, London, by four equal quarterly payments, between the hours of ten and twelve of the clock in the forenoon of the several days and times next hereinafter mentioned, (that is to say) the day of , the day of , the day of , and the day of in every year, [being the same days and times as are mentioned in the condition of the hereinbefore in part recited bond,] and all and every of which said payments are and is to be, and be made free and clear of and from all deductions and abatements whatsoever, [for or on account of any present or future taxes, rates, duties, assessments, or other matter, cause, or thing whatsoever, now being or hereafter to be chargeable, assessed, or payable for, upon, or in respect of the said annuity or yearly sum of £ , or the premises chargeable with the payment of the same, or the said (*grantee*) his executors, administrators, or assigns, by reason thereof, either by authority of parliament or otherwise howsoever,] and the first payment of the said annuity or yearly sum to be made on the day of now next ensuing the date of these presents. AND the said (*grantor*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, grant, and agree, with and to the said (*grantee*) his executors, administrators, and assigns, that he the

ANNUITIES.

*For a Term of
Years.*

Covenant for
payment of the
annuity.

ANNUITIES.

*For a Term of
Years.*

Power of
distress.

said (*grantor*) his heirs, executors, or administrators, or some or one of them, shall and will from time to time and at all times hereafter, during the said term of years, well and duly pay or cause to be paid unto the said (*grantee*) his executors, administrators, and assigns, the said annuity or clear yearly sum of £ at and upon the times and days, and in the manner hereinbefore [and in the condition of the said in part recited bond] appointed for payment thereof, according to the true intent and meaning thereof respectively (1). AND that in case the said annuity, yearly rent charge, or annual sum of £ , or any part thereof, shall happen to be in arrear and unpaid by the space of twenty-one days next after any or either of the days or times whereupon the same is hereinbefore appointed to be paid (being lawfully demanded), then and from thenceforth, and from time to time, as often as the same shall happen, it shall be lawful for the said (*grantee*) his executors, administrators, and assigns, or his or their lawful attorney or attornies, and he and they is and are hereby expressly authorised and empowered to enter into and upon all and singular or any part of the messuages, lands, tenements, heredita-

Wife.

(1) If the wife of the grantor be entitled to dower out of the lands chargeable with the payment of the annuity, add here a covenant to levy a fine; for the form of which see *ante*, No. II. p. 48, notes, also p. 142.

ments, and premises hereby charged or chargeable, or expressed or intended to be charged or chargeable with the payment of the said annuity or yearly sum of £ , and there to distrain for all or any arrears thereof, all or any goods, chattels, or other distrainable property and effects whatsoever, which shall be then and there found, or which shall have been thence unlawfully removed; and in due time after such distress or distresses shall be so made, (unless all arrears of the said annuity or yearly sum, and all expenses and reasonable charges incurred by reason thereof, shall be sooner paid or satisfied,) to cause the same goods, chattels, and effects to be appraised and sold, or otherwise disposed of, according to law, in like manner as in the case of distresses made for rent reserved upon leases, or demises for years, to and for the end and intent that the said (*grantee*) his executors, administrators, and assigns, may thereby or otherwise be fully paid and satisfied the said annuity or yearly sum, and all costs, damages, and expenses attending the recovery thereof. AND further, that in case the said annuity or yearly sum of £ , or any part thereof, shall at any time or times hereafter, during the said term of years, be behind or unpaid by the space of forty days next after the days or times hereby appointed for payment thereof, then and in such case, and from time to time as often as the same shall happen, it shall be lawful for the said (*grantee*) his executors, administrators, and

ANNUITIES.

For a Term of
Years.

Power of entry
in case of
default for
forty days.

ANNUITIES.

*For a Term of
Years.*

assigns, (although no formal or other demand shall have been made of the said arrears, or of any part thereof,) to enter into and upon all and singular the messuages, lands, tenements, hereditaments, and premises hereby charged, or expressed, or intended to be charged with the payment thereof, or into and upon any part thereof, in the name of the whole, and to have, hold, and enjoy the same, and receive and retain the rents, issues, and proceeds thereof, to and for his and their own use and benefit, until he and they shall thereby or otherwise have received or been fully paid and satisfied the same annuity or yearly sum, and all arrears thereof, (whether the same or any part thereof shall have been due before any such entry, or shall have become due subsequently thereto,) together with all costs, charges, damages, and expenses whatsoever, which shall have been occasioned or sustained by him or them, or his or their solicitors, attornies, or agents, by reason or means of the non-payment of the same; all and every which entry and entries, when made, shall be without impeachment of or for any manner of waste, other than wilful and malicious waste (1).

Copyholds.

(1) If part of the premises to be charged with the payment of the annuity be copyhold, add here a covenant to surrender them; for the form of which see *ante*, p. 84, rider (B).

Reduction of annuity.

If it be agreed that the amount of the annuity shall be reduced on punctual payment, see *ante*, p. 87, rider (C).

AND THIS INDENTURE FURTHER WITNESSETH, that **ANNUITIES.**
 in further pursuance of the said agreement, and
 for the considerations aforesaid, and for the better
 and more effectually securing the punctual and
 regular payment of the said annuity or yearly sum
 of £ at the times and in the manner afore-
 said, [and also for and in consideration of the sum
 of ten shillings of lawful current money of Eng-
 land, to the said (*grantor*) in hand well and truly
 paid by the said (*trustee*) at or before the execu-
 tion of these presents, the receipt whereof is here-
 by acknowledged,] HE the said (*grantor*) (1) at
 and by the request and nomination of the said
 (*grantee*) testified by his being a party to, and
 signing and sealing these presents (2), HATH
 granted, bargained, sold, and demised (3), and by
 these presents DOTH grant, bargain, sell, and de-
 mise unto the said (*trustee*) his executors, admi-
 nistrators, and assigns, ALL, &c. or otherwise how-
 soever, the said messuages, lands, tenements,
 hereditaments, and premises, or any of them, or
 any part thereof, now are, or is, or heretofore
 were or was situated, tenanted, called, known,
 described, or distinguished, together with all

*For a Term
of Years.*

FURTHER
WITNESS, that
for better se-
curing the
annuity.

The grantor
demises.

Parcels.

(1) If the grantor took the estate to himself and a trustee, Trustee.
see No. II. p. 28, n. (38).

(2) If the grantor be tenant in tail only of the premises charged Tenant in tail.
with the payment of the annuity, see *ib.* pp. 30, 33, and No. X.
p. 142.

(3) If the premises be leasehold, instead of the demise, insert Leaseholds.
an assignment of the lease, as *ante*, No. VII. p. 224.

ANNUITIES.

*For a Term
of Years.*

General appur-
tenances.

[houses, outhouses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, under-woods, and the ground and soil thereof, mines, quarries, rights and privileges of common of every kind, and all] and all manner of [other] rights, privileges, easements, advantages, appendances, and appurtenances whatsoever, to the said hereditaments and premises, or any part thereof, belonging, or in any wise appertaining, or reputed or deemed so to be, or with the same or any part thereof, now or heretofore lawfully holden, used, occupied, or enjoyed, [and the reversion and reversions, remainder and remainders,] and all and every the yearly and other rents, issues, and proceeds of the same. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity, of him the said (*grantor*) in, to, out of, upon, or respecting the same hereditaments and premises, and every or any of them, for and during the said term; [Together with all deeds, muniments, writings, and evidences whatsoever, which in any wise relate to the same premises, or any part thereof, and which now are, or hereafter during the said term shall or may be in the possession, custody, or lawful power of the said (*grantor*) his heirs or assigns, or of any person or persons from whom he or they can or

Grant of title
deeds.

may procure the same without action or suit at law or in equity.] To HAVE AND TO HOLD the messuages, lands, tenements, hereditaments, and all and singular other the premises hereinbefore described, and hereby granted and demised, or otherwise assured or intended so to be, [with their and every of their appurtenances] unto the said (*trustee*) his executors, administrators, and assigns, from [the day next before] the day of the date of these presents, for and during the full and complete term or period of 500 years, thence next ensuing, without impeachment of or for any manner of waste, other than wilful or malicious waste. [YIELDING AND PAYING therefore yearly and every year during the said term unto the said (*grantor*) his heirs and assigns, the rent of one pepper-corn, on the 25th day of December in every year, if lawfully demanded.] But nevertheless upon the trusts, and to and for the several intents and purposes, and under and subject to the several provisos, declarations, and agreements hereinafter declared or expressed concerning the same, (that is to say) (*add trusts, &c. &c. &c. as in the preceding forms*) (1). IN WITNESS, &c.

ANNUITIES.

*For a Term
of Years.*

To HOLD to the
trustee for the
term of 500
years.

(1) See *ante*, p. 225, *et seq.*

For various provisos, &c. to be added where requisite, see *ante*, No. II. p. 84, *et seq.*; also variations in margin of No. II.

Trusts, &c.

Provisos, &c.

* * The stat. 53 Geo. III. c. 141, requires a memorial to be Memorial.

ANNUITIES. enrolled of such annuities only as are granted for a life or lives,

For a Term
of Years.

or a term of years, or greater estate determinable upon a life or lives, no memorial therefore, it is apprehended, need be enrolled of a grant like the present, being for a term of years only without reference to lives; and see *ante*, INTRODUCTION.

ANNUITIES.

Further Charge.

No. XIII.

Grant of an Annuity by Way of further Charge upon Premises already charged with an Annuity by and to the same Grantor and Grantee.

Variations as in Margin below (1).

THIS INDENTURE, of parts, made the day of , in the year of the reign, &c. and in the year of our Lord . BETWEEN (*the grantor*) of, &c. of the first part, (*the grantee*) of, &c. of the second part, and (*the trustee in the original grant*) of, &c. of the third part. WHEREAS by another indenture bearing date the day of in the year , and made or expressed to be made between the same persons as are hereinbefore named as parties hereto, the said (*grantor*) for a valuable and sufficient consideration therein mentioned, granted unto the said (*grantee*) an annuity or yearly sum of £ during the natural lives of

Recital of former grant.

(1) If the annuity be secured on an estate tail, see *ante*, Variations. No. IV. p. 137.

If on copyholds, see No. VI. p. 184.

If on an estate for life, see No. V. p. 167.

If on leaseholds, see No. VII. p. 215.

If on money in the funds, see No. VIII. p. 247.

If on other species of property, see "TABLE OF CONTENTS."

If a surety join, see *ante*, No. XI. marg. "Surety."

Surety.

ANNUITIES. *(the nominees)* of, &c. and the life of the survivor
 of them, and made the same chargeable upon and
 issuable out of ALL, &c. AND for better se-
 curing the payment of the said annuity the said
 messuages and hereditaments were thereby de-
 mised unto the said (*trustee*) his executors, ad-
 ministrators, and assigns, from the date of the
 same indenture for the term of years, to be
 thence next ensuing, in trust to raise and pay the
 said annuity if in arrear, by the ways and means
 therein and in these presents hereafter expressed.
 AND WHEREAS the said (*grantee*) hath agreed with
 the said (*grantor*) for the purchase of a further an-
 nuity or yearly sum of £ , for the joint lives
 of them the said (*nominees*) (1), and the life of the
 survivor of them, to be secured by the bond and
 warrant of attorney of the said (*grantor*), and to
 be charged upon the aforesaid messuages, lands,
 tenements, and hereditaments, in like manner as
 the said annuity of £ is chargeable thereupon,
 and be paid at the times and in the manner here-
 after mentioned, at or for the price or sum of
 £ . AND whereas in pursuance of the
 said agreement, the said (*grantor*) by his bond or
 obligation in writing bearing even date with these
 presents, has accordingly become bounden for
 himself and his heirs to the said (*grantee*) his
 executors, administrators, and assigns, in the
 penal sum of £ , with a condition thereunder

Further Charge.

Contract for
further grant.

Bond, &c.

Life of grantor,
&c.

(1) If the annuity be granted during the life of the grantor or grantee, see *ante*, Nos. II. and III. marg. "Life of grantee, &c."

written for making void the same on payment of **ANNUITIES.**
the same annuity or yearly sum of £ on the **Further Charge.**
days, and at the times, and in the manner herein-
after mentioned; and has also executed a warrant
of attorney, bearing even date with the said bond,
empowering certain attornies therein named to
confess judgment against him in an action of debt
on the said bond in the court of King's Bench at
Westminster, in or as of last, term
next ensuing, or any subsequent term, for the said
sum of £ together with costs of suit, as in
or by the said bond and warrant of attorney, re-
ference being thereunto respectively had, will
more fully and at large appear. Now THIS IN-
DENTURE WITNESSETH, that in further pursuance
of the aforesaid agreement, and for and in con-
sideration of the sum of £ (1) of lawful and
current money of that part of the United King-
dom of Great Britain and Ireland called England,
to the said (*grantor*) in hand well and truly paid
by the said (*grantee*), at or immediately before the
sealing and delivering of these presents, the re-
ceipt whereof, and that the same is in full for the
purchase of the said annuity or yearly sum of
£ , the said (*grantor*) doth hereby acknow-
ledge, and of and from the same, and every part
thereof, doth acquit, release, exonerate, and for

WITNESS,
grantor grants
further annuity
during the lives
of, &c.

(1) If the consideration be other than money paid down, see *Consideration.*
ante, No. II. p. 75, rider (A).

If there be a surety for the grantor, see *ante*, No. II. marg. *Surety.*
“*Surety*,” and No. XI. *ibid.*

ANNUITIES.**Further Charge.**

To issue out of
premises
charged with
former annuity.

During the life
of former no-
minees.

ever discharge the said (*grantee*) his executors and administrators, by these presents, He the said (*grantor*) HATH given, granted, bargained, and sold, and by these presents BOTH give, grant, bargain, and sell unto the said (*grantee*) his executors, administrators, and assigns, one annuity or clear yearly sum of £ of such lawful and current money as hereinbefore is mentioned, to be issuing and payable, and had, received, and taken out of and from, and charged and chargeable upon ALL and singular the messuages, lands, tenements, and hereditaments (1) hereinbefore particularly described and mentioned, or intended so to be, and granted and demised in or by the hereinbefore in part recited indenture of the day of , with their and every of their appurtenants, To HAVE, HOLD, receive, perceive, and take the said annuity or yearly sum hereby granted, or secured; or expressed, or intended so to be, unto and by him the said (*grantee*) his executors, administrators, and assigns, from the day next before the day of the date hereof, for and during the natural lives of the said (*nominees*) and the life of the survivor or longest liver of them, and up to the day of his or her decease, and to be paid and payable at or in the common dining hall of the Inner Temple, London, by four equal quarterly payments, between the hours of ten and twelve of the clock in the forenoon of the several

Money in funds.

(1) If the annuity be granted out of money in the funds or the like, see *ante*, No. VIII. p. 252.

and respective days and times next hereinafter mentioned, that is to say, the day of , &c. in every year, and also a due and proportionable part of the said annuity or yearly sum for or in respect of so many days as shall happen to have elapsed from the last quarterly day of payment thereof next preceding the decease of the survivor of them the said (*nominees*) up to and until the day of his or her decease, and all and singular which said payments are and is to be and be made free and clear of and from any deduction or abatement whatsoever for or on account of any taxes, duties, matter, cause, or thing whatsoever, and the first payment thereof to be made on the day of next ensuing the date of these presents, if either of them the said (*nominees*) shall be then living, and if not, then a proportionable part thereof, immediately upon the decease of the survivor of them. AND the said (*grantor*) for himself, &c. (*Covenant to pay the annuity, with power of distress and entry, as in other cases*) (1). AND THIS INDENTURE FURTHER WITNESSETH, that for the better securing the payment of the said annuity or yearly sum of £ in the manner aforesaid, it is hereby declared and agreed by and between the several parties hereto, AND more especially the said (*grantor*) doth hereby declare and agree with and to the said (*grantee*) and (*trustee*) and their respective executors, administrators, and assigns, that he the said (*trustee*) his executors, admini-

ANNUITIES.

Further Charge.

FURTHER
WITNESS,
declaration that
trustee shall
hold the pre-
mises charge-
able with the ad-
ditional annuity
now granted.

(1) See *ante*, p. 23, *et seq.*

Covenant to
pay, &c.

ANNUITIES. strators, and assigns, shall from henceforth stand
Further Charge. possessed of and interested in all and singular the
 messuages or tenements and hereditaments so
 comprised in the term of years, so granted
 or demised to, or otherwise vested in him by the
 said hereinbefore in part recited indenture, or
 mentioned, or intended so to be, Upon trust, not
 only for securing the said annuity or yearly sum
 of £ by the same indenture expressed to be
 granted or secured, but also the said annuity or
 yearly sum of £ hereby granted, or ex-
 pressed, or intended so to be, and to that end
 and intent, it is hereby further declared and
 agreed that if the said last-mentioned annuity or
 yearly sum of £ , or any part thereof, shall
 be behind or unpaid by the space of days
 next after either of the days or times herein-
 before appointed for payment thereof, he the
 said (*trustee*) his executors, administrators, and
 assigns, shall or lawfully may, &c. (*Power of
 entry by trustee, and of sale, application of the
 money, &c. &c. as in other cases*)(1). AND the
 said (*grantor*) for himself, his heirs, &c. doth
 hereby covenant, declare, and agree with and to

Covenant by
 grantor that he
 has right to
 grant, &c.

Power of entry
 and sale, &c.
 Brevity.

(1) See *ante*, p. 35.

Or instead of inserting these powers say, for brevity sake,

“ Shall or lawfully may have and exercise all and every
 the same or like powers and authorities whatsoever for reco-
 vering and receiving the same, as in or by the said in part
 recited indenture is or are given or provided for securing
 the payment of the said annuity or yearly sum of £ ,
 thereby expressed to be granted or secured.”

the said (*grantee*) his executors, administrators, **ANNUITIES.**
 and assigns, in the manner following, that is to Further Charge.
 say, that he the said (*grantor*) now hath in him-
 self full power and lawful authority to grant the
 said annuity or yearly sum of £ unto the
 said (*grantee*) his executors, administrators, and
 assigns, for or during the term or period afore-
 said, and to charge and secure the same upon or
 by means of the said hereditaments and premises
 in the manner hereinbefore mentioned concerning
 the same, and that all and singular the same here-
 ditaments and premises shall from time to time
 and at all times hereafter, during the subsistence
 of the said annuity or yearly sum of £ hereby
 granted or secured, be subject to and chargeable
 with the same, and to the several powers, trusts,
 and remedies hereinbefore given or provided for
 payment thereof, in like manner as the same are,
 or are expressed, or intended to be chargeable
 with the said annuity or yearly sum of £
 granted or secured by the said in part recited in-
 denture of the day of , and according
 to the true intent and meaning of these presents,
 and that without any manner of hindrance, inter-
 ruption, or denial whatsoever of, from, or by him
 the said (*grantor*) his heirs or assigns, or any
 other person or persons whomsoever. **AND fur-**
 ther, that, &c. (*Covenant for further assurance*)(1).

(1) See *ante*, p. 54.

If the annuity be secured on money in the funds, add letter
 of attorney, as *ante*, p. 257.

Further assur-
 surance.
 Bank annuities,
 &c.

ANNUITIES. **AND WHEREAS** it has been agreed that the judgment to be confessed upon the hereinbefore in part recited warrant of attorney, executed by the said (*grantor*) as hereinbefore is mentioned, shall be forthwith entered up on record in the said court of King's Bench at Westminster. Now **THIS INDENTURE FURTHER WITNESSETH, &c.** (*Declaration that judgment shall be considered as a collateral security only*) (1). **AND WHEREAS** upon the treaty for the purchase of the said annuity it was mutually declared and agreed by and between the parties hereto, that the said (*grantor*) should at any time thereafter be at liberty to repurchase the said annuity at the sum of £ , upon giving six calendar months' previous notice in writing thereof to the said (*grantee*). Now **THIS INDENTURE FURTHER WITNESSETH**, that in pursuance of the said agreement it is hereby declared and agreed, &c. (*Usual power of repurchase*) (2). **IN WITNESS, &c.**

Judgment.

(1) See *ante*, p. 62.

Repurchase.

(2) See *ante*, No. II. p. 65, and No. III. p. 135.

Insurance.

If the annuity be granted during the life of the grantor, add covenant as to insurance, as *ante*, p. 59.

Provisos, &c.

* * See various provisos, &c. to be added where occasion may require, *ante*, No. II. p. 84, *et seq.*

ANNUITIES.

*Further Charge
by Indorsement.*

No. XIV.

Grant of Annuity by way of further Charge by Indorsement on the first Grant.

Variations as in Margin below (1).

THIS INDENTURE made the day of
in the year of our Lord . BETWEEN
the within named (*grantor*) of the one part, and
the within named (*grantee*) of the other part,
WHEREAS the said (*grantee*) hath since the exe- Contract for
purchase.
cution of the within written indenture agreed
with the said (*grantor*) for the purchase of a fur-
ther annuity or yearly sum of £ for the life
of the said (*grantor*), at or for the price or sum of
£ , to be secured in the same or like manner
as the within mentioned annuity or yearly sum of
£ . NOW THIS INDENTURE WITNESSETH, WITNESS,
grantor grants
additional an-
nuity to issue
out of the within
premises.
that in pursuance of the said agreement, and in
consideration of the sum of £ (2) in lawful
and current money of that part of the United
Kingdom of Great Britain and Ireland called
England, to the said (*grantor*) in hand well and
truly paid by the said (*grantee*), at or before the

(1) See *ante*, p. 348, n. (1); and if a surety join, *ante*, No. XI. Surety, &c. marg. "Surety."

(2) If the consideration be other than money paid down on Consideration.
the execution of the assurance, see *ante*, No. II. p. 75, rider (A).

ANNUITIES.

*Further Charge
by Indorsement.*

*Payable during
the life of
grantor.*

sealing and delivery of these presents, the receipt whereof, and that the same is in full for the purchase of the said annuity, the said (*grantor*) doth acknowledge as well by these presents as by the receipt or acquittance for the same sum hereupon indorsed, HE the said (*grantor*) HATH given and granted, and by these presents DOTH for himself, his heirs, executors, and administrators, give and grant and confirm unto the said (*grantee*) his executors, administrators, or assigns, for his and their own proper use and benefit, one annuity or clear yearly sum of £ of lawful current money of that part of the United Kingdom of Great Britain and Ireland called England, to be charged and chargeable upon and issuing, payable, had, received, and taken out of and from all and every the messuages, lands, tenements, and hereditaments, dividends, interest, and annual proceeds, (*as the case may be*) in or by the within written indenture expressed or intended to be charged or chargeable with the payment of the said within mentioned annuity or yearly sum of £ ,
To HAVE, hold, receive, perceive, take, and enjoy the said annuity or yearly sum of £ hereby granted or secured, or intended so to be, unto and by him the said (*grantee*) his executors, administrators, and assigns from the day of the date of these presents, for and during the term of the natural life of the said (*grantor*) (1), to be

*Life of grantee,
&c.*

(1) If the annuity be granted during the life or lives of the grantee or of nominees, see *ante*, No. II. p. 21; also *ante*, p. 346.

paid and payable by equal payments at ANNUITIES.
 and upon the same days and times, and in the Further Charge
 same manner and form as are in and by the within by Indorsement.
 written indenture appointed for payment of the
 annuity or yearly sum, with a due proportion
 thereof for any interval which may elapse between
 either of the said days and the day of the death
 of the said (*grantor*), and up to the day of his
 decease, the first payment thereof to be made
 on day of next ensuing the date
 of these presents, if he the said (*grantor*) shall
 be then living; but if not, then a proportionate
 part thereof immediately upon his decease. AND
 the said (*grantor*) for himself, &c. (*Covenant by*
grantor to pay the annuity) (1). AND THIS IN-
 DENTURE FURTHER WITNESSETH, that for the better
 securing the payment of the said annuity or yearly
 sum of £ hereby granted or secured or in-
 tended so to be, the said (*grantor*) for himself,
 his heirs, executors, and administrators doth here-
 by further covenant, grant, declare, and agree
 with and to the said (*grantee*) his executors, ad-
 ministrators, and assigns, in the manner following,
 (that is to say) that he the said (*grantee*) [and (if
 so) the within named (*trustee*) respectively, and
 their respective] his executors, administrators, and
 assigns shall and may from henceforth stand pos-

FURTHER
 WITNESS,
 grantor or trus-
 tee to have like
 powers for se-
 curing the pre-
 sent as the
 former annuity.

(1) See ante, p. 23.

Covenant to
 pay, &c.

ANNUITIES. sessed and interested in all and every the messuages, lands, tenements, and hereditaments, or dividends, interest, and annual proceeds (*as the case may be*) upon trust, as well for securing the payment of the said annuity or yearly sum of £ hereby granted, as of the said annuity or yearly sum of £ granted, or mentioned or intended to be granted or secured, in and by the within written indenture, and to that end and intent shall and lawfully may have, enjoy, and exercise all and singular the same or like powers and authorities in all respects whatsoever, for receiving and recovering the said annuity or yearly sum of £ , as are given or granted to him and them in or by the within written indenture for receiving and recovering the said annuity or yearly sum of £ thereby granted and secured, or mentioned or intended so to be. **AND** also that the covenant or agreement in the within written indenture contained for enabling the said (*grantee*) to insure the life of the said (*grantor*) shall be binding upon him the said (*grantor*), in regard as well to any further assurance to be effected by reason of these presents, on the annuity hereby granted, as any assurance to be made by reason of the within written indenture or the annuity thereby granted. **AND** moreover, that the agreement and declaration in the within written indenture contained relative to or in respect of the judgment and execution to be entered up and issued respectively, for securing the payment of

*Further Charge
by Indorsement.*

And covenants,
&c. in former
grant shall ex-
tend to this.

the within mentioned annuity or yearly sum of **ANNUITIES.**
£ , shall extend to or be construed and Further Charge
deemed to extend to any judgment or execution by Indorsement.
to be entered up or to issue by virtue of the war-
rant of attorney given for securing the payment
of the said annuity or yearly sum of £
hereby granted. AND moreover, that he the said **Further**
(*grantor*) shall and will at any time hereafter at **assurance.**
his own costs and expense, upon the reasonable
request of the said (*grantee*) his executors, ad-
ministrators, or assigns, make, do, and execute
any further act, deed, matter, or thing whatsoever,
for the better or more satisfactorily charging the
within mentioned premises with the payment of
the said annuity or yearly sum of £ ex-
pressed to be hereby granted, in such manner as
he or they, or his or their counsel in the law shall
lawfully require. AND the said (*grantee*) doth **Power of re-**
hereby for himself, his executors, administrators, **purchase.**
and assigns agree and declare with and to the said
(*grantor*) his heirs, executors, and administrators,
that he the said (*grantor*) shall have and be enti-
tled to the like privilege (1) and power of repur-
chasing and extinguishing the said annuity or
yearly sum of £ hereby granted, on pay-

(1) If the grantor is to have the liberty of repurchasing this **Repurchase by**
annuity by instalments, but has not that privilege in respect of **instalments.**
the former annuity, add, instead of this clause, the proviso, *ante*,
p. 66.

ANNUITIES. ment of the sum of £ to him the said
 (grantee) his executors, administrators, and as-
 signs, after six calendar months' notice being given
 thereof, as in the within written indenture is con-
 tained, as to or in respect of the within mentioned
 annuity or yearly sum of £ on payment
 of the sum of £ (1). IN WITNESS, &c.

Further Charge
by Indorsement.

Provisos, &c.

(1) See various provisos, &c. to be added where circumstances may require it, *ante*, No. II. p. 84, *et seq.* and INDEX, *cc.* "AGREEMENT," "COVENANT," "PROVISO."

CLASS V.

**DEEDS AND ASSURANCES RELATIVE TO DEBTORS
AND CREDITORS.**

No. I.

*Agreement at a Meeting of Creditors to compound
Debts, and give Time for Payment (1).*

MEMORANDUM OF AN AGREEMENT entered
into this day of , in the year of our

**DEBTOR
AND
CREDITOR.**

*Agreement at a
Meeting of
Creditors.*

(1) Where a debtor's affairs are in a state of embarrassment, it is generally as advantageous to the creditors as to the debtor himself, that an arrangement should be made by which he may be enabled to give up his attention to them without fear of molestation : as a concern which, by diligence and activity on the part of the trader, might speedily become sufficient to satisfy every demand upon it, is frequently rendered desperate by the neglect consequent on the perplexity of mind which must necessarily result from the importunity of impatient creditors; and hence agreements of composition with creditors, when made without fraud and upon a fair representation, are approved of by the courts of equity, which will assist in carrying them into effect; see *Pollen v. Husband*, 1 P. Wms. 751. *Cann v. Cann. ibid.* 727; but if there be any fraud or misrepresentation, in order to deceive the creditors, they will be set aside as well in

Arrangement
between debtors
and creditors
expedient.

DEBTOR
AND
CREDITOR.

Agreement at a
Meeting of
Creditors.

State of
debtor's affairs.

Lord . BETWEEN (*the debtor*) [*or debtors*]
(copartners in trade) (1), (or (A. B.) of, &c.
for and on the behalf of (*the debtor*) [*or debtors*]
of, &c.) of the one part, and (*the creditors*)
of, &c. creditors of the said (*debtor*) [*or*
debtors] of the other part. WHEREAS the said
(*debtor*) is (2) indebted to various persons in
several sums of money, which he is at present
unable to discharge. AND WHEREAS at a meet-
ing of the creditors of the said (*debtor*) this
day convened by the said A. B. at , it

equity as at law; see *Parry v. Hughes*, 2 Eq. Ca. Ab. 54, p. 12; *post*, p. 376, n. (1); *Jackson v. Mitchell*, 13 Ves. 580; *Exp. Sadl. and an.* 15 *ib.* 52; *Monger v. Kett*, 12 Mod. 558; *Cooling v. Noyes*, 6 Durnf. and E. 263; and in cases of imputed fraud, the question will, unless affected by the stat. 13 Eliz. c. 5, turn on the intention of the party. See *Mace v. Cammel*, Loft. 782; *Nunn v. Wilsmore*, 8 Durnf. and E. 521; *Pickstock v. Lyster*, 3 Maule and Selw. 371. On a meeting of creditors to investigate a debtor's affairs, or to receive a proposition respecting the liquidation of his debts, it is proper that a memorandum of the terms agreed upon or proposed, should be signed by the parties present; and the above form is given as better calculated than a more concise one, to prevent subsequent differences. See also "INTRODUCTION TO DEBTORS AND CREDITORS," *ante*, p. 356.

Copartners.

(1) As copartnership in trade is so very common a circumstance, and frequently gives rise to the necessity of varying many of the provisions usually inserted in agreements of composition with separate creditors, I have made references to it in most of the precedents I have given under the head of debtors and creditors; and see in particular *post*, No. VIII.

Copartners.

(2) If there be two or more debtors in co-partnership, the *plural* verb, &c. must, of course, be substituted throughout; a thing so obvious, that it was thought unnecessary to confuse the text by perpetually recurring to it.

was stated by the said A. B. (*or debtor*) and appeared to the major part of the persons then present, that the estate and effects of the said (*debtor*) were sufficient to answer the sum of s. in the pound, and that there was great probability, if he were permitted to pursue his business of without any further molestation from his creditors, he would within the space of years be enabled to pay the further sum of £ , [or fully to satisfy all debts and demands upon him.] Now THEREFORE the several persons whose names are hereunto subscribed, upon the faith of the statement so made to them, do hereby agree to accept of the sum of s. in the pound, upon their respective debts, within the space of calendar months from the date hereof, to be secured (*if so agreed*) by bills of exchange to be drawn upon the said A. B. (1) by and as the surety of the said (*debtor*) and delivered to them respectively, within days from the date hereof, and to accept of the further sum of s. in the pound, making in the whole the sum of s. in the pound, to be secured by an assignment (2) or other convey-

DEBTOR
AND
CREDITOR.

Agreement at a
Meeting of
Creditors.

Agreement by
creditors to
accept of
in the pound.

(1) No consideration is requisite to validate the undertaking of a person to pay the debt of another; *Ex parte Minet*, 14 Ves. 190: it is requisite, however, in order to its validity, that such undertaking should be in writing; see 29 Car. II. c. 3. s. 4.

No considera-
tion necessary
for agreeing to
pay another's
debt.

(2) A simple agreement between creditors to accept of a composition in satisfaction of their demands is not binding upon them whilst it remains in an executory state, such agreement being *nudum pactum*, for want of a consideration; *Stock v.*

Agreement
without
consideration
void.

DEBTOR
AND
CREDITOR.

Agreement at a
Meeting of
Creditors.

Recommendation for other
creditors to
agree.

Covenants, &c.
to be contained
in the assign-
ment, &c.

ance to be forthwith made of his estate and effects (except wearing apparel) to the abovenamed (*two or more creditor-trustees*) or other fit and proper persons, upon the trusts hereinafter mentioned, or referred to. AND the said several creditors, parties hereto, do hereby strongly advise and recommend all other the creditors of the said (*debtor*) to accede to the terms above proposed, as being in their opinion the best that the circumstances of the said (*debtor*) will admit. AND it is hereby agreed by the said creditors, parties hereto, and the said (*debtor*) [or the said A. B. on the part of the said (*debtor*)] that there shall in the said deed of assignment and conveyance be contained all such provisoes, declarations and agreements as the counsel in the law of the said trustees shall advise [and in particular (if thought fit) the following, that is to say (1), that the trustees therein

Mawson, 1 Bos. and Pul. 286 ; Lodge v. Dicas, 3 Barn. and Ald. 611 ; but otherwise, if under seal, Fitch v. Sutton, 5 East, 230, or the agreement be executed by acceptance of a poundage under the deed, or where an assignment is made by the debtor of his effects to trustees, (which would be a good consideration at law to support a promise of forbearance), Heathcote v. Crookshanks, 2 Durnf. and E. 24, or the payment is guaranteed by a third person, Steinman v. Magnus, 11 East, 390 ; an agreement of the present nature should therefore be immediately followed by some more formal instrument ; see *post*, Nos. III. to IX.

Usual stipulations.

(1) The covenants, &c. here inserted are those which are the most generally proper ; but they must, of course, be varied to suit the particular circumstances of each case, for which see margins of Nos. III. IV. (A) and V. (A) ; for brevity sake, however, those included within brackets may be omitted altogether down to p. 364, marg. *.

named shall sell or otherwise dispose of or retain and manage the property of the said (*debtor*) at their discretion, and that their receipts shall be sufficient discharge, and stand possessed of the money to arise thereby, after defraying the expenses of the said assignment, and of executing the trusts thereof, and payment of rent, taxes, salaries, and wages of clerks and servants, upon trust, to satisfy in full (if they shall think proper) the several creditors of the said (*debtor*) whose debts shall not exceed, or who shall be willing to accept of the sum of £ in full of their debts, or who by reason of infancy or other disability may be incapable of legally consenting to the said assignment. And after payment thereof, upon trust, to divide the residue of the said monies in equal proportions between other his creditors who shall become parties or accede to the said assignment, until they shall respectively have received the sum of s. in the pound, and pay over the residue of the said monies, if any, to him the said (*debtor*). AND in the said deed of assignment and conveyance there shall be contained powers for the said trustees to require all debts alleged to be due to the said creditors to be verified upon oath, and all securities for the same to be delivered up (1); AND also to pay di-

DEBTOR
AND
CREDITOR.

Agreement at a
Meeting of
Creditors.

Powers to be
given to the
trustees.

(1) In a transfer of personal chattels possession must accompany the assignment; *Dutton v. Morrison*, 17 Ves. 197, *Edwards v. Harben*, 2 Durnf. and E. 587, *Banford v. Baron*, *ib.* 594, and of choses in action, as debts, a delivery of the securities; Possession to accompany assignment.

DEBTOR
AND
CREDITOR.

*Agreement at a
Meeting of
Creditors.*

vidends upon sums accruing due upon bills of exchange, or other securities, retaining the discounts in like manner as under commissions of bankruptcy; AND to discharge extents and the costs relative thereto; AND to set apart the debts of such creditors as shall be beyond sea; AND to pay such creditors the full amount of their debts after years for the purpose of finally closing the trust account; AND to compound for or give time for payment of debts owing to the said (*debtor*); AND to sign the certificates of bankrupts indebted to him; AND upon the sale of any part of the said trust property, to give time for the payment of the purchase money; AND to buy in any part thereof attempted to be sold by auction; AND to arrange with creditors entitled to a transfer of stock; AND to exclude from the benefit of the trust all creditors who (not being abroad) shall not accede thereto within years from the date thereof, and if abroad then within years next thereafter: AND also those who shall not have given notice of their debts before a final dividend shall have been made of the effects of

Ryal v. Bowles, 1 Ves. 348, 1 Atk. 171; unless where the retaining of possession is consistent with the object of the parties. *Steele v. Brown and an.* 1 Taunt. 381; and see *Hiern v. Mill*, 13 Ves. 122, and *Dutton v. Morrison*, 17 *ib.* 197; and it is to be observed that an attested copy or other notice of assignment of debts or securities should be given to the persons owing the money, as any payment afterwards made to the creditor without notice will be valid. *Jones v. Gibbons*, 9 Ves. jun. 410, and *vid.* *Twyne's Ca.* 3 Co. 80, *Hoffman v. Pitt*, 5 Esp. N. P. C. 22, also *ante*, INTRODUCTION.

the said (*debtor*); AND to refer doubts respecting the amount of any debts to arbitration; ALSO to hire a counting or other house for conducting the affairs of the said (*debtor*); AND to employ clerks and other persons to assist therein at or for such salaries or other remuneration, and with such discretionary powers as they the said trustees shall think proper; AND to commence or defend any suits or actions respecting the said trust estate; AND to give effectual discharges to persons paying money on the account of the said (*debtor*); AND a declaration that the execution of the said assignment or conveyance by creditors having prior securities for their debts, shall not invalidate the same. AND ALSO in the said assignment or conveyance there shall be contained covenants on the part of the said trustees to apply the trust monies according to the trusts therein to be contained, and to deposit all monies and securities which they shall receive, with some banker or bankers, in , for the benefit of the said creditors; And state their accounts every months, if required by any three of the creditors whose debts shall respectively amount to £ ; And that upon payment to the said creditors of s. in the pound, the said trusts shall cease, and the trustees shall stand possessed of the residue, if any, of the trust property in trust for the said (*debtor*). AND in the said assignment or conveyance the said (*debtor*) shall covenant that he hath made a full discovery of his estate and effects to the best of his knowledge; AND that he will make oath to the truth of the accounts delivered

DEBTOR
AND
CREDITOR.

Agreement at a
Meeting of
Creditors.

Covenants to
be entered into
by the trustees.

Covenants, &c.
to be entered
into by the
debtor.

DEBTOR
AND
CREDITOR.

Agreement at a
Meeting of
Creditors.

*
Letter of licence
to be given to
debtor.

in by him if required; AND assist the trustees in the execution of the trusts to the best of his power*.] And in the said assignment or conveyance there shall be given to the said (*debtor*) full liberty and licence to follow any his affairs within the United Kingdom, without molestation, for the space of months from the date thereof, on the penalty of the creditors acting contrary thereto to forfeit their debts. AND moreover a proviso and agreement, that in case all the creditors of the said (*debtor*) whose debts shall respectively amount to £ or upwards, do not come in within the space of then next ensuing, if resident in any parts of the United Kingdom, and within the space of , if resident elsewhere, the said assignment and the trusts thereof, except so far as the same shall have been carried into effect, shall be void (1). AND that in

Avoidance of
deed.

(1) Where an assignment is made of the effects of a debtor who is liable to the bankrupt laws, it is proper to insert a clause that the deed shall be void in case the creditors do not accede to the terms of composition, as such assignment might otherwise, as to third persons not privy to the assignment, amount to an act of bankruptcy under 1 Jac. 1. c. 15. s. 2, *Jackson v. Irvin*, 2 Campb. 49. *Back v. Gooch*, 4 *ib.* 232, *Bamford v. Baron*, 2 Durnf. and E. 594, n. (a); *Eyre v. Birbeck*, *ib.* 595, n. (b); and even with that proviso it seems that it will be an act of bankruptcy if the trustees are authorised to act in the mean time and divest the debtor of all control over his affairs. See *Back and an. v. Gooch*, 4 Campb. 232, *Tapenden v. Burgess*, 4 East, 230, *Dutton v. Morrison*, 17 Ves. 193; see also *post*, No. IV. (A). Notes. But this is not necessary in a mere agreement of composition, where nothing actually passes; see *Jolly et al. assignees of Norton v. Wallis*, 3 Esp. Rep. 228. Such a clause will however be proper, where a surety guarantees performance of the terms of composition, as any sacrifice made by the surety

case the said sum of s. in the pound shall not be paid within the space of years from the date thereof, the creditors shall be at liberty to sue for the whole of their debts then remaining unpaid (1). And in the said assignment or conveyance shall also be contained the usual powers for appointing new trustees, and clauses for their indemnity, and payment of their expenses. And that any doubts upon the construction of the said assignment shall be determined by the opinion of the counsel to be named by the said trustees. AND LASTLY, that the decision of the major part of the said trustees relative to any of the matters or things aforesaid, shall be binding upon the rest and upon other the said creditors. IN WITNESS, &c.

DEBTOR
AND
CREDITOR.

Agreement at a
Meeting of
Creditors.

New trustees
and indemnity.

Acts of majority
to bind.

on behalf of the debtor will be of but little use to him if he be still liable to the claims of outstanding creditors; and it is held on behalf of such a surety, that if he execute a composition deed under an agreement that it shall be void if all the creditors do not come in, a delivery of the deed to one creditor for the purpose of getting it executed by the others, is to be considered only as an escrow, and the surety will not be bound unless all the creditors execute. *Johnson v. Baker*, 4 Barn. and Ald. 440; and see *Dutton v. Morrison*, 17 Ves. 193, 200; also *post*, p. 375, n. (1), 433, n. (37); and *post*, No. IV. (A) in notes; also INTRODUCTION, which see, *ante*, p. 356.

(1) If a creditor agree to accept a poundage in consideration of its being paid, or other act being done at a particular time, such time is an essential ingredient in the contract; and on failure the creditors are absolved from their agreement as well in equity as at law. See *Leigh v. Barry*, 3 Atk. 583. even although no demand of performance have been made by them; *Crauley v. Hillary*, 2 Maul. and Sel. 120.

Time of per-
formance.

. In addition to the notes subjoined to this precedent, see Notes. also those subjoined to Nos. II, III, IV. (A), V. 1. VII, VIII.

DEBTOR
AND
CREDITOR.

No. II.

*Agreement for
Deed of
Composition.*

*An Agreement for a Deed of Composition between
a Debtor and his Creditors, preparatory to a
more formal Instrument.*

Variations as in margin below (1).

Parties.

ARTICLES OF AGREEMENT, made and concluded upon this day of , in the year of our Lord . BETWEEN (*the debtor*) [*or debtors*] (2) of, &c. [copartners in trade] of the first part,

Wife not a necessary party to composition deed.

(1) See also margins of No. IV. (A) *post*, p. 439, *et seq.*

(2) The wife of a debtor need not in any case be a party to a deed of mere composition between him and his creditors, where there is not any actual conveyance of real property out of which she is dowable; she must be a party and levy a fine if her interest is to be bound; unless she be herself the debtor, and a sole trader within the city of London, when, by the custom of that city, she may compound with her creditors, or do any other act to bind her property, in the same manner as if she were sole. *Exp. Carrington*, 1 Atk. 206, and *Lavie v. Phillips*, 3 Burr. 1776; 1 Black. Rep. 570. S. C. (where the words of the custom are set out); but by the general law of the land, independently of such particular custom, she cannot now be considered as a debtor, even though she live apart from her husband on a separate maintenance; see *Marshall v. Rutton*, 8 Durnf. & E. 545, by which the cases in support of a contrary doctrine were overturned. And although a woman become indebted previously to her marriage, yet, upon her marriage, she is no longer a debtor, but her former creditors become creditors of her husband; *Mills v. Williams*, 1 P. Wms. 249; except only in equity as to any separate property of which her creditors had notice; *Lillia v. Airey*, 1 Ves. jun. 277; (but see case *ex parte Deacon*, 5 Barn. and Ald. 759, hereafter noticed;) see also *post*, No. VI. n. (1).

(*the principal creditors*) of, &c. creditors
of the said (*debtor*) [*or debtors*] of the second
part, and (*an inspector*) of, &c. an inspector
named and appointed by and on the behalf of the
said (*creditors*) of the other part. WHEREAS the
said (*debtor*) [*or debtors*] now carries (1) on the
business of , but finding his affairs, by reason
of various losses in trade, to be in a state of em-
barrassment, on or about the day of
instant, convened a meeting of his principal cre-
ditors, in order to consider of the most eligible
steps to be taken for their mutual benefit, when
it was agreed that such assignment, or other as-
surance or arrangement, should be made by the
said (*debtor*) [*or debtors*] of or respecting his real
and personal estate and effects, as might be best
adapted to secure the speedy payment of their
several debts, and that until such assignment or
other assurances could be prepared for that pur-
pose, a person should be appointed to inspect and
oversee the management of his said trade or busi-
ness, and that the said (*debtor*) [*or debtors*] should
enter into such covenants and agreements re-
lative thereto as are hereinafter contained. Now
THEREFORE THESE PRESENTS WITNESS, and it is
hereby agreed and declared by and between all
the said parties hereto, that the said (*inspector*)
shall be and is hereby named and appointed to
inspect and oversee the business and concerns of
the said (*debtor*) [*or debtors*] during the pleasure
of the said (*creditors*), and shall be immediately

DEBTOR
AND
CREDITOR.

Agreement for
Deed of
Composition.

State of
debtor's affairs.

WITNESS,
appointment of
inspector.

(1) See *ante*, p. 358, n. (2).

DEBTOR
AND
CREDITOR.

Agreement for
Deed of
Composition.

Covenant by
debtor to deliver
in a true account
of debts, &c.

And execute
requisite assur-
ances.

put in possession of the stock in trade thereof, and that no goods, wares, merchandise, or effects of or belonging to the said business, shall, from the date hereof, be removed or delivered without the privity and consent of the said (*inspector*).

AND he the said (*debtor*) [*or each of them the said debtors*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said (*creditors*) their executors, administrators, and assigns, in manner following (that is to say) that he the said (*debtor*) [*or debtors*] his executors or administrators, shall and will, within the space of days from

the date of these presents, make out and deliver in writing, a clear and exact inventory or statement of his several debts and credits, and estate and effects of every kind and description, and verify the same upon oath, if thereunto required.

AND shall and will immediately, or at any time thereafter, upon request made to him for that purpose by the said (*creditors*) or the major part of them, execute such assignment or conveyance and assurance, or enter into such arrangements respecting the same, as that thereout, or by means thereof, such parts thereof as do or shall consist of money, debts, or securities for money, shall or may, with all convenient speed, be collected and gotten in, and that such parts thereof, as do or shall not consist of money, debts, or securities for money, shall or may be sold, or otherwise disposed of, and the money to arise therefrom or to be so collected or gotten in, be paid and distributed unto and amongst them the several creditors of

the said (*debtor*) [*or debtors*] in a due and just ratio and proportion, according to the nature and amount of their respective debts, and according and without prejudice to their securities for the same respectively. AND FURTHER, that in the mean time, and until such assignment, conveyance, or other deed or assurance, shall be made and perfected, he the said (*debtor*) [*or debtors*] shall not nor will alien, dispose of, charge, release, or incumber the said debts, estate, and effects, or any part thereof, in any manner howsoever, nor shall nor will do or knowingly suffer, or cause to be done any act or thing whatsoever, whereby any creditor shall obtain, or have a greater preference or advantage in point of priority or security for payment of his or her debt, than he or she respectively now hath or had at the time of the said recited meeting of creditors. AND it is hereby further declared, that in the said assignment, conveyance, or other assurance to be made of the said estate, property, and effects, or in some or one of them, there shall be contained all such covenants, provisoes, clauses, agreements, licences, powers, indemnities, and declarations, by and between or on the part of the several parties thereto respectively, as are usual in deeds between debtors and creditors for the like ends and purposes, together with such other covenants, provisoes, clauses, agreements, and declarations as the counsel in the law of the said (*inspector*) shall deem necessary or proper, in order to carry the true intent and meaning of

DEBTOR
AND
CREDITOR.

*Agreement for
Deed of
Composition.*

Will not incumber his property.

The deed to contain all proper covenants, &c.

DEBTOR
AND
CREDITOR.

*Agreement for
Deed of
Composition.*

Trusts to be
contained in the
deed.

these presents and of the parties hereto into effect, in the manner most advantageous and beneficial for the said several creditors, [and in particular (1) that there shall (if thought fit) be therein contained covenants, provisoes, declarations, or agreements to the purport or effect following (that is to say) that the trustees therein named shall sell or otherwise dispose of, or at and of their own sole and proper discretion, (2) retain and manage the property of the said (*debtor*) [*or debtors*] and stand possessed of the money to arise thereby, after defraying the expenses of the said assignment, and of executing the trusts thereof, and payment of the rent and taxes, payable for the premises where the concerns of the said (*debtor*) [*or debtors*] shall be carried on, and the salaries and wages of clerks and servants employed therein, UPON TRUST to satisfy in full (if they shall think proper) all and every or any of the creditors of the said (*debtor*) [*or debtors*] whose debts shall not exceed, or who shall be willing to accept of the sum of £ in full of their respective debts, or who by infancy or other dis-

(1) See *ante*, p. 360, n. (1).

Discretion of
trustees.

(2) Where creditors agree to accept of an assignment of the debtor's effects to be disposed of in a manner particularly specified, without a discretion being given to the trustees to alter the mode of disposition, a creditor, although he may disapprove of a deviation from the mode originally agreed upon, will nevertheless be precluded from a remitter to his original rights against the debtor, because the debtor cannot be equally remitted to his original situation; *Heathcote v. Crookshanks*, 2 Durnf. and E. 27; *Cork v. Saunders*, 1 Barn. and Ald. 46.

ability shall be incapable of legally consenting to the said composition. AND after full payment thereof, UPON TRUST to divide the residue of the said monies, in equal proportions, between such other of the creditors of the said (*debtor*) [*or debtors*] who shall become parties to the said deed, until they shall respectively have received *s.* in the pound, on their respective debts. AND upon trust to pay over the residue of the said monies, if any, to him the said (*debtor*) [*or debtors*] his executors, administrators, or assigns. AND in the said deed, there shall also be contained powers for the trustees or inspectors of the concerns of the said (*debtor*) [*or debtors*] to pay dividends upon sums accruing due upon bills of exchange or other securities; upon retaining lawful discount for the same, in like manner as under commissions of bankruptcy; AND also to discharge extents upon the property of the said (*debtor*) [*or debtors*] and all reasonable costs relating thereto; AND also to set apart the debts of such creditors as shall be beyond sea, until they shall return to the United Kingdom of Great Britain and Ireland, or previously assent to the said deed; AND to pay to such creditors the full amount of their debts, after the lapse of years thereafter, if they shall think proper, for the purpose of finally closing the affairs of the said (*debtor*) [*or debtors*]; AND also to compound for or give time for payment of debts; owing to the said (*debtor*) [*or debtors*]; AND to sign certi-

DEBTOR
AND
CREDITOR.

Agreement for
Deed of
Composition.

Powers to be
given to trustees.

**DEBTOR
AND
CREDITOR.**

*Agreement for
Deed of
Composition.*

Covenants to
be entered into
by the trustees.

ficates of persons who shall be indebted to him and become bankrupt; AND upon the sale or getting in of any part of the said estate and effects, to give time for the payment of the purchase money, and to buy in any part thereof attempted to be sold by auction; AND to arrange with creditors entitled to a transfer of stock; AND to exclude from the benefit of the said deed all creditors who (not being abroad) shall not accede thereto within years from the date thereof, and if abroad, within years next thereafter; AND also those who shall not have given notice of their debts before a final dividend shall have been made of the said debtor's effects; AND to refer doubts respecting the amount of any debts to arbitration; AND also to hire a counting-house or other house for conducting the affairs of the said (*debtor*) [*or debtors*]; AND to employ clerks and other persons to assist therein, at or for such salaries or other remunerations, and with such discretionary powers as the said trustees shall think proper; AND to commence or defend any suits or actions respecting the estate and effects of the said (*debtor*) [*or debtors*]; AND also a declaration that the execution of the said deed by creditors, having prior securities for their debts, shall not invalidate such securities. AND in the said deed, there shall also be contained covenants on the part of the trustees respectively, to apply the monies to arise from the said estate and effects, according to the declarations and agreements therein contained;

AND to deposit all monies, and securities for money, which they shall from time to time receive, above the amount of £ , with Messrs. , or other banker or bankers, in , for safe custody; AND state their accounts every months, if required by any of the creditors, whose debts respectively or aggregately shall amount to £ . AND that upon payment to the said creditors of s. in the pound, the said deed and the trusts thereof, so far as the same concern the said creditors, shall cease and become void, and the trustees stand possessed of the residue, if any, of the estate and effects of the said (*debtor*) [*or debtors*], IN TRUST for him [*or them*], his [*or their*] executors, administrators, and assigns. AND in the said deed shall be contained a covenant by the said (*debtor, or &c.*), that he hath made a full discovery of his estate and effects to the best of his knowledge; AND that he will make oath to the truth of the accounts delivered in by him, if required; AND afford every assistance in his power to the trustees or inspectors, in the execution of the trusts reposed in them. AND by the said deed, there shall be given to the said (*debtor, or &c.*) full liberty and licence to follow any of his affairs in England, Wales, or Ireland, without molestation, for the space of months from the date thereof, on the penalty of the creditors acting contrary thereto to forfeit their debts. AND that in case the sum of s. in the pound shall not be paid within the space of years from the date thereof, the creditors shall be

DEBTOR
AND
CREDITOR.

*Agreement for
Deed of
Composition.*

Covenants to
be entered into
by debtor.

Letter of licence
to be given to
debtor.

DEBTOR
AND
CREDITOR.

Agreement for
Deed of
Composition.

Indemnity to
trustees.

If creditors do
not come in,
deed to be void.

at liberty to sue for the whole of their debts then remaining unpaid. AND in the said deed shall also be contained the usual powers for appointing new trustees or inspectors, and clauses for their indemnity and payment of their expenses. AND also a proviso that any doubts upon the construction of the said deed shall be determined by the opinion of counsel, to be named by the said trustees or inspectors for the time being. AND also a declaration, that if all the creditors of the said (*debtor, or &c.*) whose respective debts may amount to £ , do not execute the said deed within the space of months from the date thereof, the trusts then shall be void. AND LASTLY, that the decision of the major part of the said trustees or inspectors relative to the affairs of the said (*debtor, or &c.*) shall be binding upon the others of them, and also upon the said creditors parties thereto. PROVIDED ALWAYS nevertheless, and it is hereby further agreed and declared, that in case any of the creditors of the said (*debtor, or &c.*) whose debts shall individually or collectively amount to the sum of £ , (except only such of them whose debts are under the sum of £ , or who shall choose to rely on their present securities for the same), shall not execute, or otherwise accede to these presents, within the space of calendar months next ensuing the date hereof, if resident within the United Kingdom of Great Britain and Ireland, or within the space of calendar months, if resident elsewhere, then these presents, so far as the same respectively shall not

have been carried into effect, (but without prejudice thereto, so far as the same may have been carried into effect), shall be and be considered to be null and void to all intents and purposes whatsoever (1). IN WITNESS, &c.

DEBTOR
AND
CREDITOR.

Agreement for
Deed of
Composition.

(1) See *ante*, p. 364, n. (1), to which may be added, that as a trust deed is meant for the benefit of all the creditors, the court will not decree a sale for the benefit of such only as may have come in under the deed; *Atherton v. Worth*, 1 Dick. 375. See also *post*, No. IV. (A), p. 439, *et seq.* in notes.

. See further on the above and other clauses in deeds between *debtors and creditors*, *post*, No. IV. (A), pp. 439, *et seq.* in margins and notes.

DEBTOR
AND
CREDITOR.

*Deed of
Composition.*

No. III.

A Deed of Composition (1) between a Debtor and his Creditors, where the Debtor is allowed to carry on his Business under the control of Inspectors.

Variations as in margin below (2).

THIS INDENTURE, of parts, made the day of , [* in the year of the reign, &c. and] in the year of our Lord . BE-

Fraud on creditors will vacate the deed.

(1) In entering into an agreement for a composition with creditors, care must be taken by the debtor and his solicitor not to offer any collateral security, or hold out any exclusive advantages to any reluctant creditor to induce him to execute the deed, as this will not only be inefficient with respect to the favoured party, but may also invalidate the assent of the other parties; as will also any false statement made to them respecting the debtor's affairs, or the favourable disposition of his creditors. See *Jackson v. Lomas*, 4 Durnf. and E. 166. *Cooling v. Noyes*, 6 *ib.* 263. *Leicester v. Rose*, 4 East, 372. *Mauson v. Stock*, 6 Ves. jun. 300. And if the debtor be subject to the bankrupt laws, it should be ascertained whether at the time of the execution of the deed he have committed an act of bankruptcy, as a creditor signing in ignorance of that circumstance, will not be precluded from becoming a petitioning creditor under a commission, even although he may have previously received a dividend under the composition deed. *Roe dem. Pitcher v. Anderson*, 5 Maule and Selw. 161; and see *post*, p. 434, note, also INTRODUCTION, *ante*, p. 356.

Variations.
Brevity.

(2) See also *post*, No. IV. (A), p. 439, *et seq.* in margins.

* Where brevity is particularly desired, those parts of the precedent within brackets may be omitted.

TWEEN (*the debtor*) (1) [*or debtors*] of, &c.
 of the first part, (*inspectors*) of, &c. being re-
 spectively creditors of the said (*debtor*) and also
 inspectors of his concerns, appointed for the pur-
 poses hereinafter mentioned, of the second part,
 and the several other persons whose names (2) and
 seals are hereunto subscribed or affixed, being cre-
 ditors also of the said (*debtor*) [*or debtors*] of the
 third part. WHEREAS the said (*debtor, or &c.*) is (3)
 indebted to the several persons who are herein-
 before named as parties hereto of the second and
 third parts respectively, in the several sums of
 money placed opposite to their respective names
 in the schedule hereunder written (4). AND
 WHEREAS at a meeting of the creditors of the said
 (*debtor*) on the day of now last past, it

DEBTOR
AND
CREDITOR.

Deed of
Composition.

Recital of meet-
ing of creditors,
&c.

(1) It is not necessary that the wife of the debtor should be a party, and see *ante*, No. II. p. 366, n. (1). Wife.

(2) As creditors under a deed of composition frequently sign by their attorney, or other authorised agent, it is common to add here the names of the agents or attornies executing the deed; but this is not necessary, nor indeed is it correct that the names of such attornies or agents should be subscribed, but the name of their respective principals. See Vol. I. No. I. p. 3, n. (2), and *ib.* p. 23, n. (32). Agent party.

(3) See *ante*, p. 358, n. (2).

(4) The particular amount of each creditor's debt should, in general, be specified in a deed of composition; for a creditor signing with the amount of his debt in blank, will be bound to the extent of all existing debts then owing to him by the debtor; although the deed have express reference to those only which are specified in an annexed schedule. *Holmer v. Viner*, 1 Esp. 131. *Harby v. Wall*, 2 Star. 195, 1 Barn. and Ald. 101. Copartners.
Schedule of
debts.

DEBTOR
AND
CREDITOR.

*Deed of
Composition.*

was represented and satisfactorily made to appear to them by the said (*debtor*) that by reason of various unforeseen losses and obstacles in trade he was rendered unable to pay the several demands upon him immediately, but that his stock in trade and other his estate and effects were amply sufficient for that purpose, wherefore it hath been mutually agreed (1) by and between the several parties hereto, that the term of years should be given to the said (*debtor*) to collect in and dispose of his said estate and effects, and that in the mean time he should be permitted to manage and improve the same under the inspection of the said (*inspectors*) who

Previous agreement.

(1) If the deed of composition be entered into in pursuance of a previous written agreement for that purpose, it will be proper to recite such agreement, in order to show that the deed is prepared in conformity to it, the form of which recital may be as follows:—

Recital of
agreement for
deed of composition.

“AND WHEREAS by articles of agreement entered into the day of now last past, and made, or expressed to be made between the said (*debtor*) of the one part, and the several persons who are therein named as being the principal creditors of the said (*debtor*) of the other part, it was mutually agreed and declared by and between the several parties thereto, that such assignment or other assurance or arrangement should be made of or respecting the estate and effects of the said (*debtor*) as should seem best calculated to secure the most speedy payment of his several debts (*or as the case may be*). AND WHEREAS the arrangement and disposition hereinafter agreed upon and provided for concerning his said estate and effects have been deemed the most eligible mode for that purpose. Now THIS INDENTURE WITNESSETH,” &c. *as above*.

have been unanimously chosen for that purpose, under and subject nevertheless to the conditions, stipulations, and agreements hereinafter contained respecting the same. Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and for and in consideration (1) of the covenants and agreements hereinafter contained on the part of the said (*debtor*) to be performed and observed; THEY the said (*inspectors*) and the several other persons, parties hereto of the third part, for themselves respectively, and their respective partners (2), and his and their several and respective heirs, executors, and administrators, but not any one of them for the other or others of them, or for the heirs, executors, administrators, or partners, or the acts or deeds of any other or others of

DEBTOR
AND
CREDITOR.

Deed of
Composition.

WITNESS, that
in pursuance of
said agreement.

(1) If bills are to be given by the debtor, say,

Bills.

“ For and in consideration of several bills of exchange bearing date respectively the day of and drawn by the said creditors and accepted by the said (*debtor*) to to the amount of shillings in the pound upon their respective debts, the receipt whereof they do hereby respectively acknowledge, and of,” &c. *as in the text.*

(2) Deeds of composition with creditors are exceptions to the general rule, that one co-partner cannot bind his co-partner by deed; executory agreements, however, entered into by the present co-partners, will not be binding upon those who may thereafter succeed them, there being no transmission of rights or obligations from them to any new or succeeding partners. See *Arlington v. Merrick*, 2 Saund. 412. *Wright v. Russell*, 2 Blac. Rep. 934. 3 Wils. 532, *S. C.* *Barker v. Parker*, 1 Durnf. and E. 287. *Myers v. Edge*, 7 *ib.* 254. *Strange v. Lee*, 3 East, 484.

How far credi-
tors co-partners
may bind each
other.

DEBTOR
AND
CREDITOR.

*Deed of
Composition.*

Creditors give
letter of licence
to debtor.

Creditors not to
molest debtor.

Co-partners.

them, but each for himself only and his own heirs, executors, administrators, and partners, and acts and deeds respectively, HAVE and each of them HATH given and granted, and by these presents Do and each of them DOTN give and grant unto the said (*debtor*) (1) full, free, and absolute liberty and licence to carry on, conduct, and manage all and every his said trade or business of and other his affairs and concerns, and collect, get in, and sell, dispose of, convey and assign all or any part of his estates, debts, and effects, under the inspection, and subject to the approbation and control of the said (*inspectors*) from henceforth until the day of , which will be in the year of our Lord , if he the said (*debtor*) shall so long live, and continue to observe and perform the several covenants and agreements hereinafter contained on his part or behalf to be observed or performed, [unless these presents shall sooner become null and void by virtue of the provision hereinafter contained in that behalf.] And that they the said parties, creditors as aforesaid, or any or either of them, (each

(1) A release to one of two joint debtors will operate as a legal discharge to both of them, unless countervailed by express declaration, *Solly v. Forbes*, 2 Bing. and Brod. 38, and cases there cited; if therefore there be several debtors in copartnership, and only one of them be intended to be released or licensed, not only the names of the other co-partners must be here omitted, but words to the following effect should be added.

“ And to him the said (*debtor*) [*or debtors*] only, and not to the said (*other debtor*) [*or debtors*] or either of them.”

covenanting separately as aforesaid) shall not nor will, during the time or period, and observance and performance aforesaid, sue, arrest, or prosecute him the said (*debtor*) or in any way impede or molest him in the carrying on or management of his said business or concerns, or the sale or disposition of his estate and effects, under such control and inspection as aforesaid, nor seize or possess themselves of, or in any wise attach, or intermeddle with his goods, estates, property, or effects in any wise whatsoever. AND each of them the said parties hereto of the second and third parts respectively, do hereby consent and agree, that in case any or either of them, or any or either of their executors, administrators, partners, and assigns, do or shall act in any wise contrary to the covenant and agreement lastly hereinbefore contained, he the said (*debtor*), his heirs, executors, and administrators, shall be, and he and they is and are by these presents thenceforth and for ever acquitted, exonerated, and discharged of and from all and every the debts, claims, and demands whatsoever, which now are, or is due and owing to them respectively, [and of and from all actions, suits, and proceedings whatsoever to be had or taken for or in respect of the same,] and that in every such case this present letter of licence and agreement shall or lawfully may be shown and pleaded in release of, and bar to all and every such debt and debts, and actions, suits, and proceedings for recovery thereof, as effectu-

DEBTOR
AND
CREDITOR.

*Deed of
Composition.*

If creditors
arrest debtor,
their debts to
be void.

DEBTOR
AND
CREDITOR.

*Deed of
Composition.*

Covenant by
debtor to de-
liver in true
account of
debts, &c.

ally and beneficially, as if a general release or acquittance for the same respectively had been given under his or their hand and seal, or respective hands and seals. AND the said (*debtor*) for and in consideration of the licence and privilege so hereby given to him as aforesaid, doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said (*inspectors*) respectively, and their respective executors, administrators, partners, and assigns, and also with and to all and every other the creditors of him the said (*debtor*) parties hereto, and their respective partners, and their and each and every of their executors, administrators, and assigns, in the manner following, that is to say (1), that he the said (*debtor*) shall and will forthwith, and as soon as conveniently can be hereafter, make out and fairly state in writing under his hand, a true and exact account of all and singular his debts and credits, claims and demands, and estate, property, and effects whatsoever, and of the several charges, outgoings, liens, and incumbrances upon or affecting the same respectively, and deliver the same, or a fair and true copy thereof, unto each of them the said (*inspectors*) on or before the day of next ensuing the date of

Discretionary
covenants.

(1) The covenants, &c. to be inserted in deeds of composition must of course be such as will agree with the intention of the parties and particular circumstances of each case; and see *ante*, p. 360, n. (1).

these presents. AND further, that he the said (*debtor*) shall and will from time to time, and at all times hereafter, during the time or period hereby limited for that purpose, use and employ his best endeavours to advance and promote the future increase and prosperity of his said trade, under and subject to the direction and advice of them the said (*inspectors*), and to collect and get in his said estate, property, debts, and effects for the benefit of his said creditors, parties hereto, and from time to time when and so often as any sum or sums of money shall be received by him, or come to his hands sufficient to answer and pay the sum of shillings in the pound, upon or in respect of his said debts, shall and will pay and distribute the same unto and amongst them his said creditors, their respective executors, administrators, and assigns, partner and partners, rateably and in proportion to the amount of their respective debts [as set forth in the schedule thereof hereunder written, and in the mean time and until the same shall be so paid and distributed, shall and will from time to time place or deposit the same for safe custody in the hands of a banker or bankers to be approved of by the said (*inspectors*) or otherwise dispose thereof in such manner as they or the major part of them the said (*inspectors*) shall think fit and direct, subject only to the provisos and agreements hereinafter contained respecting the same (that is to say) PROVIDED ALWAYS nevertheless, and it is hereby declared and agreed, that the said (*debtor*) shall or lawfully may, yearly

DEBTOR
AND
CREDITOR.

Deed of
Composition.

Collect in and
distribute his
effects as after
mentioned.

Allowance to
debtor for his
support.

DEBTOR
AND
CREDITOR.

*Deed of
Composition.*

Law and other
expenses to be
first paid.

Small creditors
may be paid in
full.

Dividends may
be retained for
outstanding
creditors.

and every year during so long as he shall observe and perform the covenants, agreements, and matters and things herein contained on his part to be performed and observed, be allowed to retain for his own use, out of the produce or proceeds of his said trade or business the yearly sum of £ by even quarterly payments for the subsistence of himself and family. PROVIDED ALSO that it shall be lawful for the said (*debtor*), with the consent of the said (*inspectors*), out of the monies which shall from time to time come to his hands after payment of all law charges and expenses, and salaries and allowances for clerks and others employed in the said trade, and the charges and expenses to be incurred in carrying on the same, and getting in and disposing of the proceeds thereof, in pursuance of these presents, to pay and fully satisfy in the first place all such and so many of the present creditors of him the said (*debtor*) whose debts do not exceed the sum of £20, or to pay that sum to such of them who will agree to accept thereof in full of their respective debts or demands. PROVIDED further, that in case any dividend shall be made of the estate and effects of the said (*debtor*) before all his said several creditors, by themselves, or their respective attornies, shall have executed or otherwise acceded to these presents (1), it shall

Creditors bound
by assenting.

(1) A deed of composition will be binding upon all parties acceding to it after accepting a dividend under it, or otherwise, although they shall not sign the deed, Jolly *et al.* assignees of

also be lawful for the said (*debtor*) with the assent of the said (*inspectors*) to retain the rateable dividends of every such creditor or creditors, and pay the same to him and them respectively upon his or their executing or acceding to these presents, and in default of any such dividend being so retained by him, shall or lawfully may pay to such creditor or creditors, upon his or their executing or acceding to these presents, a rateable dividend or dividends answerable to the amount of his or their respective debts out of any future proceeds of his estate and effects, and before any further dividend or payment shall be made to or amongst any of his said creditors. AND the said (*debtor*) doth hereby for himself, his heirs, executors, and administrators, further covenant, promise, and declare with and to the said (*inspectors*) and all other his creditors, parties hereto, and to and with their respective partners, and each and every of them, their and each and every of their executors, administrators, and assigns, that he the said (*debtor*) his executors or administrators shall not nor will at any time hereafter convey, alienate, dispose of, or in any manner charge or incumber, or cause or procure, or knowingly

DEBTOR
AND
CREDITOR.

*Deed of
Composition.*

Covenant by
debtor not to
incumber his
property.

Norton v. Wallis, 3 Esp. Rep. 228, and so upon creditors assenting verbally only, if the debtor assign over his property for their benefit in consequence. Buller v. Rhodes, 1 Esp. 236; Peake Ca. 238; and cases cited *ib.* 239, n. (a). Boothby v. Sowden, 3 Camp. 175; Steinman v. Magnus, 11 East, 390; and see *ante*, p. 359, n. (2); 364, n. (1).

DEBTOR
AND
CREDITOR.

*Deed of
Composition.*

Nor give pre-
ference to
creditors.

Will not em-
bark in any new
concern.

suffer to be conveyed, alienated, disposed of, or in any wise charged or incumbered, all or any part of the estate, property, or effects, whether real, personal, or mixed, of him the said (*debtor*) or any his present or future estate, right, title, interest, or expectancy therein or thereto, or in, or to any part thereof, other than and subject to such control as aforesaid, without the consent in writing of the said (*inspectors*) under their respective hands. AND shall not nor will do or cause or procure, or knowingly permit or suffer to be done or committed any act, matter, or thing whatsoever, whereby any or either of the creditors of him the said (*debtor*) shall or may obtain or have any further or other security or securities for his, her, or their debt or debts, or other priority in respect thereof than that or those which they respectively have at the time of the sealing and delivery of these presents, or whereby any or either of his said creditors shall have or receive a greater advantage in or concerning his or their debt or debts, than the other or others of them, save only and except such of the said creditors whose debts do not respectively exceed, or who will accept of the sum of £20 in full thereof as aforesaid (1). AND further, that he the said (*debtor*) until his said creditors shall be fully paid and satisfied their said respective debts and lawful demands, or agree to accept a part in satisfaction of the whole of the

(1) See *ante*, p. 364, n. (1).

same, shall not nor will either alone or with any other person or persons whomsoever, undertake or become engaged in any new or other trade, concern, or business, nor enter into any speculative, dubious or uncertain contract or agreement whatsoever, nor contract any new or other debts, (save only in the due, regular, and unavoidable course of his present trade or business), nor become bound, bail, or surety for any person or persons whomsoever, for or in respect of any debt or other matter or thing whatsoever, without the like consent and approbation of them the said (*inspectors*) as aforesaid, first had and obtained for that purpose. AND further, that he the said (*debtor*) shall and will from time to time, and at all times hereafter until his said debts shall be fully paid and satisfied, keep or cause to be kept proper books of account relating to his said trade, estate, and effects, and make or cause to be made therein true and proper entries of all receipts, payments, disbursements, and other outgoings, and all other transactions, matters, and things whatsoever concerning the same, in such manner as is usual with persons in a like trade or business, or which shall be requisite or proper to explain or show at all times the state and condition of his said trade, estate, and effects in a clear and satisfactory manner, in all things. AND also shall and will from time to time, and at all or any reasonable time and times, permit and suffer them the said (*inspectors*) and each and every or any of them, at their or his own free will and pleasure,

DEBTOR
AND
CREDITOR.

*Deed of
Composition.*

Will keep
proper ac-
counts.

To be inspected
by the cre-
ditors.

DEBTOR
AND
CREDITOR.

*Deed of
Composition.*

State accounts
once a month.

And verify the
same upon oath
if required.

Power of in-
spectors to
appoint clerks,
&c.

to inspect and examine the said books of account, and all other books, papers, and writings in the custody or power of the said (*debtor*) relating to his said trade, estate, and effects, and to copy, or cause to be copied, or make or cause to be made extracts from the same, or any of them. AND also shall and will at the end of every month, or oftener if required by the said (*inspectors*) or any or either of them, make and deliver to them or him, in writing under his hand, an abstract or general statement of the receipts and payments, and other transactions and proceedings relative to his said trade or business up to the end of the month then next preceding. AND also shall and will, if thereunto required by them or any or either of them, verify the truth of such accounts and statement upon oath, before one of the masters of the high court of Chancery, or any other person or persons competent to administer the same. AND it is hereby further declared and agreed by and between all and every the parties hereto, that for accelerating the ends and purposes aforesaid, it shall be lawful for the said (*inspectors*), and they are hereby authorised and empowered to nominate and appoint one or more clerk or clerks, or other person or persons to assist the said (*debtor*) in the management of his said trade or business, at such salary or wages as they shall think proper, and also for them the said (*inspectors*) to do, order, direct, and assent to all and every, or any such other acts, matters, and things whatsoever, relative to the

matters or things aforesaid, as they in their discretion shall at any time and from time to time hereafter think fit and expedient. AND also that in case the said (*debtor*) or his estate or effects shall be arrested, taken in execution, or otherwise attached, by any or either of his said creditors, they the said (*inspectors*) or any or either of them may, and are, and is hereby authorised and empowered to bail, or cause to be bailed, the said (*debtor*), and the said (*inspectors*) may contest or otherwise act concerning the debt or debts of such creditor or creditors at the expense of the estate and effects of the said (*debtor*) as they shall think fit. AND it is hereby further covenanted, agreed, and declared by and between the several parties hereto, that if by reason of any unforeseen cause not wilfully occasioned by the said (*debtor*) any delay shall happen to take place in the final settlement of his affairs, so as to prevent the several creditors parties hereto, from receiving the full amount of their respective debts, at or before the expiration of the said term of years, hereby limited for winding up the concerns of the said (*debtor*) and for payment of his creditors in manner aforesaid, then and in such case it shall be lawful for the said (*inspectors*), and they are hereby fully authorised and empowered, if they shall think proper, without any further consent of the others of the said creditors than is hereby given, to prolong or extend the said term or period for the further space of calendar months, to be computed from the expiration of

DEBTOR
AND
CREDITOR.

*Deed of
Composition.*

May bail
debtor.

May prolong
the time for
payment of
debts.

DEBTOR
AND
CREDITOR.

*Deed of
Composition.*

Covenant by
debtor to pay
within the time
limited.

FURTHER
WITNESS,
creditors engage
to accept, &c.

the said term, and that thereupon and an indorsement under the hands of the said (*inspectors*) being made upon these presents to that effect, all and every the said creditors, parties hereto, their heirs, executors, partners; and assigns, shall and will continue and be bound by the covenants, provisoes, declarations, and agreements herein contained in favour of him the said (*debtor*) in the same, or like and in as full and complete a manner for such further period of calendar months, to all intents and purposes, as if the said term of years, and months had been originally or primarily limited or appointed for that purpose. AND the said (*debtor*) doth hereby in manner and form aforesaid, further covenant, promise, and agree with and to the several parties hereto respectively, and their respective executors, administrators, partners, and assigns, that he the said (*debtor*) his heirs, executors, or administrators, shall and will well and truly pay or cause to be paid unto all and every of them the said creditors parties hereto, their respective executors, administrators, partners, or assigns, or other person or persons by them respectively authorised to receive the same, their full and whole debts and demands at or before the expiration of the said term of years, or other the prolonged or extended period aforesaid, (if the same shall be granted) in the manner and proportions hereinbefore appointed for payment thereof, and according to the true intent and meaning of these presents. AND THIS INDENTURE FURTHER WIT-

NESSETH, that for and in consideration of the co-
 venants, provisoes, and agreements herein con-
 tained, by and on the part of the said (*debtor*)
 to be observed and performed, it is hereby declared
 and agreed by and between all and every the se-
 veral parties hereto, creditors of the said (*debtor*)
 and each of them, for himself, his heirs, executors,
 administrators, partners, and assigns, doth hereby
 covenant, promise, and agree with and to the said
 (*debtor*) his executors, administrators, and assigns,
 in the manner following, that is to say, that they
 the said several persons parties hereto, creditors of
 the said (*debtor*) and their respective heirs, exe-
 cutors, administrators, partners, and assigns, (each
 covenanting severally as hereinbefore mentioned),
 shall and will accept and receive their said re-
 spective debts and demands, so now due and
 owing to them respectively by the said (*debtor*)
 as aforesaid, in the way and manner, and at the
 times in and by these presents, declared or ex-
 pressed for the payment thereof. **AND** further,
 that in case they the said creditors shall not have
 received the whole of their respective debts, on or
 before the day of or such other pro-
 longed or extended period as aforesaid (if granted),
 and the said (*debtor*) shall and do on such the
 said day of or other day or time last
 aforesaid, well and truly convey, assign, assure,
 and deliver up unto such person or persons as
 they the said creditors, or the major part or num-
 ber of them, shall, at a meeting to be holden pur-
 suant to days' previous notice in the Lon-

**DEBTOR
 AND
 CREDITOR.**

*Deed of
 Composition.*

If debts not
 paid within a
 given time, and
 debtor's estate
 then delivered
 up, creditors
 will execute
 releases.

DEBTOR
AND
CREDITOR.

*Deed of
Composition.*

don Gazette, name and appoint, all such parts of his estate and effects as shall then remain undivided or otherwise unapplied to the ends and purposes aforesaid, for the use and benefit of them the said creditors in such manner as they the said creditors, or the major part of them, shall require, (he the said (*debtor*) having well and truly observed and performed all and every the covenants and agreements herein contained on his part to be performed and observed, except only with respect to the payment of his said debts within the period aforesaid), then and in such case the said creditors, parties hereto, their respective executors, administrators, partners, and assigns, shall and will thereupon duly execute and deliver unto the said (*debtor*) his executors and administrators, legal, sufficient, and effectual releases and discharges of and from all debts and demands whatsoever, which are now due and owing to them the said creditors respectively, and deliver up all bonds, bills, notes, and other securities for the same (1), whether of, from, or given by him the said (*debtor*) or by any surety or sureties of or for him (2), and of and from all accounts relative

Securities to be
given up.

(1) Creditors have a right to retain their securities notwithstanding a composition between them and the debtor, unless otherwise declared by the deed, or they be paid in full; *Thomas v. Courtnay*, 1 Barn. and Ald. 1.

Surety.

(2) It is competent for creditors signing a deed of composition with the principal debtor and certain of his sureties, to reserve their remedies against other sureties, if not otherwise stipulated, *Ex parte Carstairs*, 1 Buck. 560.

thereto, and all actions, suits, remedies, and means whatsoever, both at law and in equity, for recovering the same, or any part thereof. AND further, that in case any commission of bankruptcy shall be awarded and prosecuted against the said (*debtor*) and prior to the issuing thereof, any dividends of his estate shall have been made in pursuance of these presents, then and in such case they the said creditors respectively, shall and will come in and be admitted and considered as creditors under the said commission for the residue only of their respective debts now due and owing to them respectively from the said (*debtor*) after deducting or retaining the sums which they shall respectively have received under these presents, upon their respective debts (1), and they the said creditors parties hereto, shall and will give their respective consent to the allowance to the said (*debtor*) of the said allowance or sum of £ per annum, up to the time of the issuing such commission, and confirm and allow the several payments which the said (*debtor*) shall have made by virtue of these presents, to creditors whose debts and demands shall not exceed the sum of £20, or who shall agree to take that sum in full thereof, and also all such costs, charges, and expenses as aforesaid. PROVIDED ALWAYS never-

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AND
CREDITOR.

*Deed of
Composition.*

If debtor become bankrupt, creditors to come in under the commission.

If debtor fail in performance of his covenants,

(1) The validity of this clause seems to be established by the case of *ex parte Vere re Palmer*, 1 Rose, 281; and see 19 Ves. 93, S. C. and attend to the judicious remarks of the reporter there, p. 99, n. (a); see also *ex parte Peele*, 1 Rose, 435.

Creditors to come in under commission.

DEBTOR
AND
CREDITOR.

*Deed of
Composition.*

Or if creditors
refuse to come
in, these pre-
sents to be void.

theless, and it is hereby declared and agreed to be the true intent and meaning of these presents, and of the parties hereto, that if the said (*debtor*) shall depart this life or make default in performance or observance of any or either of the covenants, clauses, stipulations, or agreements hereinbefore contained on his part or behalf, to be observed or performed (1), or in case any of the creditors of the said (*debtor*) whose debts respectively amount to the sum of £ , (except only such of them, who being possessed of other securities, shall choose to rely thereon) shall not, by themselves, or their respective attornies, duly execute or otherwise accede to these presents within the respective times next hereinafter mentioned (2), (that is to say) such of them as are

Deed void on
failure of per-
formance by
debtor.

(1) There appears to be no objection to this clause (although its validity has been questioned) "for the rights of the creditors ought to be effected only to the extent of their contract with the debtor: a deed of composition is not an act of bankruptcy without assignment of effects, but a perfectly fair stipulation by covenant, and on failure by the debtor to perform his stipulations they are to be remitted to their original rights." See *ex parte Vere*, 19 Ves. 96, 98; also *ex parte Peele*, 1 Rose, 435.

Creditors may
come in after
the time limited.

(2) A creditor will not be excluded, although he should not come in until after the time specified. But a bill in equity may then be exhibited to compel the creditors, who stand out, to come in or renounce the benefit of the trust. See *Dunch v. Kent*, 1 Vern. 260; and it is reasonable if a certain number of creditors agree to terms of postponement on the faith of their co-creditors acceding to the same terms, that their signatures should be void, on the refusal of the rest, as the subsequent proceedings of the outstanding creditors against the debtor might exhaust the whole of his means of payment, and the acceding creditors lose the whole of their debts.

residing in Great Britain within three calendar months; such of them as are residing in other parts of Europe, within six calendar months; and such of them, if any, who are residing in America, or elsewhere out of the confines of Europe, within twelve calendar months next after the day of the date hereof; then and in either of the said cases, this present indenture [and the licence and liberty hereby given, and every other article, clause, matter, or any thing herein contained,] so far as the same respectively tend to restrain the said creditors from suing for, or recovering his, her, or their respective debts, within the time aforesaid, shall cease, determine, and be utterly void (1) to all intents and purposes whatsoever, any thing herein contained or implied to the contrary thereof in any wise notwithstanding. PROVIDED ALWAYS, and it is hereby further declared and mutually agreed by and between all and every the parties hereto, that in case any or either of the said (*inspectors*) shall depart this life, or shall refuse or decline to act in the matters and things hereby delegated or entrusted to them or him as aforesaid, or shall go to reside beyond the seas, then and in every such case it shall be lawful for the major part in number of the creditors of the said (*debtor*) present at any meeting holden pursuant

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AND
CREDITOR.

*Deed of
Composition.*

Power of appointing new inspectors, on death, &c.

(1) See *ante*, No. II. p. 364, n. (1); but the doctrine of bankruptcy does not apply to a deed of the present kind, where the debtor does not divest himself of the means of trading, and see *ante*, p. 394, n. (1).

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AND
CREDITOR.

*Deed of
Composition.*

Indemnity to
Inspectors.

to days' previous notice in the London Gazette, to nominate and choose such other person or persons as they shall think fit to be an inspector or inspectors in the place and stead of such of the said inspector or inspectors as shall so die, or refuse, or decline to act, or go to reside abroad, and every such person so to be chosen aforesaid, shall have the like powers and authorities in all things, as the person or persons in whose room or place they or he shall have been chosen, had, or might have exercised under or by virtue of these presents, if living or continuing to act, or as if the name or names of such new inspector or inspectors had been inserted in these presents. AND it is hereby also agreed and declared by and between all the parties hereto, that each and every of the said (*inspectors*), and all and every other the inspector and inspectors for the time being, who may be appointed by virtue of these presents, shall be indemnified, protected, and saved harmless by or out of the estate and effects of the said (*debtor*) or by his said other creditors, against or in respect of all transactions and personal engagements, matters, and things whatsoever, which they shall lawfully and rightfully do, or cause to be done, or enter into, order, or direct in, or concerning the estate and effects of the said (*debtor*) by virtue or in pursuance of these presents, and that they the parties hereto of the third part, and every of them, their, and his heirs, executors, administrators, partners, and assigns, shall and will from time to time and at all times, allow and con-

firm the same in all things; And further, that every of them the said (*inspectors*), and other the inspector or inspectors for the time being, to be appointed as aforesaid, shall be reimbursed and repaid out of and from the estate and effects of the said (*debtor*) or by other the said creditors, all such costs, charges, damages, and reasonable expenses whatsoever, as they, or any or either of them, shall respectively pay, sustain, or be put unto, in, about, or concerning the matters and things aforesaid, or in any wise relating thereto.

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AND
CREDITOR.

*Deed of
Composition.*

Trustees' ex-
penses.

AND lastly, it is hereby declared and agreed, by and between all and every the parties hereto, that the opinion and direction of the major part of the persons who shall be inspectors of the concerns of the said (*debtor*) for the time being under or by virtue of these presents, shall at all times be binding and conclusive upon him the said (*debtor*) relative to the management of his said trade and affairs, and also upon his said creditors, parties hereto, in like manner as if they the said (*inspectors*) had all agreed and concurred therein.
IN WITNESS, &c.

Acts of major
part of inspec-
tors to be bind-
ing.

. See additional clauses, &c. to be inserted in deeds between debtors and creditors where occasion may require, *post*, No. IV. (A). pp. 439, *et seq.* in margins.

DEBTOR
AND
CREDITOR.

*Conveyance of
Freeholds for
Sale.
(Full Form.)*

No. IV.

*A Conveyance of Freehold Estates of Inheritance to
Trustees in Trust for Creditors (1). (Full Form.)*

Variations where Part of the Estate is Copyhold.

Where the Wife of the Debtor is a Party.

Where the Debtor is seised in fee-tail or for Life only.

*Where he took the Estate to himself and a Trustee to
bar Dower.*

*Where he is seised of a Moiety or other Portion only
of the Estate.*

Where he is entitled in Remainder or Reversion.

*Where different Kinds of Property are assigned, &c.
by the same Deed (2).*

THIS INDENTURE, of _____ parts, made the

Bankruptcy.

(1) As to where a conveyance of the whole of a man's property in trust for creditors will constitute an act of bankruptcy, see *post*, No. VII.; to which may be added, that if he be a trader, a conveyance of a part only of his property to or for the benefit of particular creditors only (he being then in insolvent circumstances) will be considered fraudulent, under stat. 1 Ja. 1, c. 15, for that act does not require that such a conveyance should be made in contemplation of bankruptcy, in order to be fraudulent, but renders it so if it be such as has a tendency to defeat or delay the payment of other creditors; see *Pulling v. Tucker*, 4 Barn. and Ald. 382, also *Morgan v. Horseman*, 3 Taunt. 941; see also 13 Eliz. c. 5, and 27 *ib.* c. 4; and *ante*, p. 364, n. (1).

Separate conveyances of
each species of
property.

(2) Where part of the estates of the debtor is leasehold or personalty as well as of inheritance, it will be proper that there should be separate conveyances of each of those species of pro-

day of in the year of the
reign, &c. and in the year of our Lord

DEBTOR
AND
CREDITOR.

. BETWEEN (*the debtor*) (3) of, &c.
of the one part, and (*the trustees for sale*) of,
&c. {creditors (†) of the said (*debtor*)

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party; see *ante*, Vol. I. No. XXI. p. 277, n. (1); but lest any circumstance should make it desirable that the whole of the debtor's property should be conveyed by the same assurance, variations are subjoined to render it applicable to that circumstance; and see *post*, No. IX.

(3) If the debtor be married, and his wife not barred of her title to dower, make her a party with her husband. Wife.

If the debtor took the estate to himself and a trustee to prevent dower, make such trustee a party of the second part. Dower trustee.

If he be tenant in tail only of the premises, make the tenant to the præcipe a party of the second part, and see Vol. I. No. XXII. p. 297, n. (1). Tenant in tail.

(†) In a conveyance to trustees in trust to sell and pay off incumbrances, and discharge other debts of the owner, it is frequently desirable that the incumbrancers, as well as the other creditors, should become parties to the deed, for the purpose of consenting to the sale and the powers given to the trustees for the execution of the trusts, for they will otherwise be liable to be impeded by the clashing interests of the creditors, particularly should the fund prove insufficient to discharge all the incumbrances upon it; and to simplify the execution of the trusts, the incumbrancers are sometimes made to join in the actual conveyance of the estate to the trustees; but this seems unreasonable, as it may sometimes be hazardous for them to divest themselves of the estate before they have received their money; it is more usual, therefore, to make them assenting parties only, with covenants that they will join in the requisite conveyances, on being paid the sums due to them, see *post*, p. 409, in notes. Incumbrancers should be parties.

And here it may be noticed that a conveyance to trustees, for payment of debts, is good against the heir or representative of the debtor, although no creditor be a party; but it will be void by the statutes on fraudulent conveyances, as against creditors not parties, and also subsequent purchasers, without notice;

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and trustees named and appointed on behalf of themselves, and other the creditors of the said (*debtor*) for the purposes hereinafter expressed) of the other part. WHEREAS, &c. (4)

Langton v. Tracey, 1 Ch. Rep. 33; Leech v. Leech, Chan. Ca. 249; Turbach v. Marbury, 2 Vern. 510; 13 Eliz. c. 5; 27 *ibid.* c. 4; and Pickering v. Lyster, 3 Maul and Sel. 371; but where the creditor is a party, the forbearance of suit will be a sufficient consideration to support the deed, as against himself and those claiming under him, Eastwick v. Cailland, 5 Durnf. and E. 420.

Dower-trustee.

(4) If the debtor took the estate to himself and a trustee for preventing dower, recite here the deed by which it is so limited to him, as,

“ WHEREAS by indentures of lease and release, bearing date respectively the and days of , in the year of our Lord , and made, or expressed to be made, between of the first part, the said (*debtor*) of the second part, and the said (*debtor's trustee*) of the third part, the messuages, lands, and hereditaments hereinafter described, were conveyed and assured, and now stand limited to the use of such person or persons, for such estate or estates, interest or interests, and to and for such ends, intents, and purposes, and upon such trusts, and subject to such powers, provisos, conditions, restrictions, limitations, declarations, and agreements, as the said (*debtor*) his heirs, appointees, or assigns, should at any time or times (amongst other ways or means therein mentioned), by any deed or deeds, instrument or instruments in writing, to be by him sealed and delivered in the presence of and attested by two or more credible witnesses, direct, limit or appoint, and in default of, and until such direction, limitation, or appointment should be made, and when and as any estate or estates, interest or interests thereby directed, limited, or appointed, should determine subject thereto, and in the mean time, and as to such part or parts of the same messuages, lands, tenements, and hereditaments, and all such estate and estates, interest and interests therein respectively of which no direc-

WHEREAS the said (*debtor*) being indebted to various persons in divers sums of money on mortgage and other securities which he is desirous of discharging, hath agreed for the more speedy payment thereof, to convey the several lands and hereditaments hereinafter described together with his purchases and other estates, unto the said

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tion, limitation, or appointment should be effectually made to the use of the said (*debtor*) and his assigns, during the term of his natural life, with remainder to the use of the said (*trustee*) his executors and administrators, during the life of the said (*debtor*) but in trust for the said (*debtor*) and his assigns, with remainder to and for the absolute use and behoof of the said (*debtor*) his heirs and assigns for ever."

If the debtor be tenant in tail or for life only of the premises, recite here the deed or will by which the estate was created, as, Tenant in tail.

"Whereas under or by virtue of certain indentures of lease and release, bearing date respectively, &c. the release being of parts, and made, or expressed to be made, between, &c. [Or Whereas under or by virtue of the last will and testament of , late of, &c. , deceased] the (*debtor*) is seised of an estate in fee-tail [or for life, &c.] of or in the messuages, &c. hereinafter described."

If he be entitled to a moiety or other portion only of the estate, see Vol. I. No. XXVI. p. 382. Moiety, &c.

If in remainder or reversion only, see Vol. I. No. XXIV. p. 342. Remainder, &c.

If leaseholds are assigned by a separate deed, refer to the assignment, as, Leaseholds.

"And whereas, by an indenture of assignment, bearing even date herewith, and made or expressed to be made between the same parties as are parties hereto, he has assigned all and singular his leasehold estates to the said (*trustees*) their executors, administrators, and assigns, upon the same or like trusts and purposes."

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CREDITOR.**

*Conveyance of
Freeholds for
Sale.
(Full Form.)*

WITNESS, that
in considera-
tion, &c.
The debtor
grants and
releases.

(*trustees*) in trust to sell or otherwise dispose of the same, and apply the money to arise from such sale, or other disposition, in the manner and for the purposes hereinafter expressed or referred unto concerning the same (5). Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, [and for and in consideration of the sum of five shillings of lawful money of England to the said (*debtor*) in hand well and truly paid by the said (*trustees*) at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged] He the said (*debtor*) (6)

Incumbrancer
party.

(5) If an incumbrancer be party (see *ante*, p. 399, n. (†),) add,

“ And whereas the said (*mortgagee*) for facilitating the said trusts, and in consideration of the provision being made for payment to him of the principal and interest money due to him from the said (*debtor*) as hereinafter is mentioned, hath agreed to join in these presents, as hereinafter expressed.”

Wife.

(6) If the wife of the debtor be a party, it is usual, but unnecessary, to make her join in the conveyance, as,

“ They the said (*debtor*) and his wife, HAVE, and each of them HATH,” &c. (*as above*.)

Incumbrancer
party.

If an incumbrancer be a conveying party, (but see *ante*, p. 399, n. (†),) say,

“ He the said (*mortgagee, or other incumbrancer*) (at the nomination and at the instance and request of the said (*debtor*) testified as hereinafter mentioned, and according to his estate, right, and interest in the premises) HATH bargained, sold, and released, and by these presents DOETH bargain, sell, and release, and he the said (*debtor*) HATH granted,” &c. (*as above*).

Dower-trustee.

If the debtor took the estate to himself and a trustee to prevent dower, insert here the appointment of the estate, as,

“ HE the said (*debtor*) pursuant to, and in exercise of

HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant, bargain, sell, alien, release, and confirm unto the

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AND
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Freeholds for
Sub.
(Full Form.)*

the power and authority given or reserved to him, in or by the hereinbefore in part recited indenture of release, and by virtue thereof, and of all and every or any other power or powers, authority or authorities in any wise, enabling him in this behalf, and at the request and by the nomination of the said (*trustees*) testified by their being parties to, and signing and sealing these presents, HATH directed, limited, and appointed, and by this present deed or instrument in writing, by him sealed and delivered in the presence of two credible persons, whose names are, or are intended to be hereupon indorsed, as witnesses hereto, DOTH absolutely and irrevocably direct, limit and appoint, that all and singular the messuages, lands, tenements, hereditaments, and premises hereinafter particularly described and intended to be hereinafter granted and released, shall remain, continue, and be, and that the hereinbefore in part recited indentures of lease and release, and all other assurances heretofore made, of the same hereditaments or any part thereof, shall be and enure unto the said (*trustees*) and their heirs, upon such trusts, and to and for such ends, intents, and purposes, as are hereinafter declared or expressed concerning the same. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, and for the further, better, and more perfectly and satisfactorily conveying and assuring the said messuages, lands, tenements, and hereditaments unto the said (*trustees*) upon the trusts, and to and for the ends, intents, and purposes hereinafter mentioned, [and also for and in consideration of the sum of ten shillings of like lawful and current money in hand, at the time aforesaid, well and truly paid by the said (*trustees*) to the said (*debtor*) and (*his trustee*) respectively, the receipt whereof is hereby acknowledged,] THEY the said (*debtor*) and (*debtor's trustee*) (but as to the said (*trustee*) by way of conveyance only and not of warranty) at and by such request and nomination, and so testified as aforesaid,

Debtor appoints.

Debtor and trustee grant, &c.

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AND
CREDITOR.

Conveyance of
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(Full Form.)

Parcels.

General appur-
tenances.

said (*trustees*) and their heirs (7), ALL, &c. (8) or howsoever otherwise, the said messuages, lands, tenements, and hereditaments, or any of them, now are, or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished, and also all other the messuages, lands, tenements, and hereditaments, (if any) which are described or comprised in a certain indenture of bargain and sale hereinafter referred to, as bearing date the day next before the day of the date hereof; TOGETHER with (9) all [houses (10), out-

HAVE, and each of them HATH granted, bargained, sold, and released, and by these presents Do, and each of them DOTH grant, bargain, sell, release, and confirm unto the said (*trustees*) and their heirs, ALL," &c. (*as in the test.*)

Tenant in tail.

(7) If the debtor be tenant in tail, see rider (A), *post*, p. 435.

Parcels.

(8) Here describe the messuages, &c. intended to be conveyed by their present name, situation, tenancy, &c. and if any material variation, by reason of new erections or otherwise, have recently taken place in the ancient description of the premises, set forth the premises here, according to their present description, adding (*if so*)

"Being the several messuages or tenements comprised in and assured by the said hereinbefore in part recited indenture of release, &c. as the same have been since varied and altered by new erections, &c. built thereon," (*or as the case may be.*)

Moiety, &c.

(9) If the conveyance be of a moiety or other portion only of the estate, see Vol. I. No. XXVI. p. 384.

Remainder, &c.

If of a remainder or reversion, see *ibid.* No. XXIV. p. 346.

General words.

(10) Vary these general words according to the nature of the property, as whether a manor, messuage, &c.; see general words applicable to different kinds of real property, INDEX, *vide* GENERAL WORDS.

houses, buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common of every kind, and all] and all manner of [other] rights, privileges, easements, advantages, appendances, and appurtenances whatsoever to the said messuages, lands, tenements, hereditaments, and premises, or any of them, or any part thereof respectively, belonging, or in any wise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed. (ALL which said messuages, lands, tenements, and hereditaments, are now in the actual possession of or legally vested in the said (*trustees*) by virtue of a bargain and sale to them thereof made by the said (*debtor*) for five shillings consideration, by indenture (11) bearing date the day next before and executed previously to the sealing and delivery of these presents, for the term of one year, commencing from the day next preceding the day of the date of the same indenture, and by force of the statute made for transferring uses into possession) and the reversion and reversions, and remainder and remainders of and in the said hereditaments and

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Reference to
the bargain and
sale for a year.

(11) See the form of this bargain and sale, Vol. I. Nos. XIII. Lease for a year.
XIV. pp. 110, 117.

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Grant of title
deeds.

And copies.

premises and every of them respectively, and all and singular the rents (12), issues, and profits of the same premises, or any part thereof; AND all the estate, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity of him the said (*debtor*) in, to, out of, upon, or respecting the same hereditaments and premises, or any of them. [TOGETHER with all deeds, muniments, writings, and evidences, which in any wise relate to the same premises, or to any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are, or hereafter shall or may be in the possession or lawful power of the said (*debtor*) his heirs or assigns, or of any person or persons from whom he or they can or may procure the same, without action or suit at law or in equity; and true and attested copies duly stamped, when and as the said (*trustees*) their heirs or assigns, shall require the same, of the several deeds, muniments, writings, and evidences comprised or mentioned in the schedule hereunder written or hereunto annexed, and of all other deeds, muniments, writings and evidences (if any) not being of record, which now are, or hereafter shall or may be so in his, their, or any of their possession, custody, or power, as aforesaid, in any wise relating to the same heredi-

Rents.

(12) The rents are sometimes assigned by a separate witnessing part of the deed. The form of which is given, *post*, p. 413, n. (21).

taments and premises, or any of them, jointly with other hereditaments or property of equal or greater value, such copies, when first required, to be made and delivered at the expense of the said (*debtor*) his heirs, executors, or administrators, but all future copies to be made and taken at the expense of the person or persons requiring the same.]

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TO HAVE AND TO HOLD the messuages, lands, tenements, hereditaments, and all and singular other the premises hereby granted and released, or otherwise assured, or intended so to be, with their and every of their rights, members, and appurtenances unto the said (*trustees*) and their heirs, to the use and behoof of them the said (*trustees*) their heirs and assigns for ever (13), but nevertheless UPON THE TRUSTS, and to and for the ends, intents, and purposes, and under and subject to the powers, provisos, declarations, and agreements hereinafter declared or expressed concerning the same (14),

To hold to the
trustees and
their heirs.

*
Upon trust to
sell, &c.

(13) If the debtor be tenant for life only, say,

Tenant for life.

“ For and during the term of the natural life of him the said (*debtor*).”

(14) If the wife of the debtor be a party, or the debtor be tenant in tail (barrable by fine) add here a covenant to levy a fine, as,

Wife, in tail.

“ AND THIS INDENTURE FURTHER WITNESSETH, that [for Fine. barring all estates tail, &c. (as *ante*, p. 144, n. (1), and *post*, p. 435)] the said (*debtor*) doth hereby for himself, his heirs, executors, and administrators, covenant, declare, and agree with and to the said (*trustees*) their heirs and assigns, [and she the said (*wife*) doth hereby consent and agree,] that they the said (*debtor*) and his wife, shall and will at the proper expense and costs of the said (*debtor*) his executors

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(that is to say) UPON TRUST, that they the said

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Declaration of
the uses of the
fine.

or administrators, as of term now last past, [and in default thereof, then in, or as of any subsequent term, when thereunto required by the said (*trustees*) or the survivor of them, or the heirs of the survivor, or of their or his assigns,] well and duly acknowledge and levy, or cause to be so acknowledged and levied, unto them the said (*trustees*) or the survivor of them, &c. before the justices of his Majesty's court of Common Pleas at Westminster or other justice or justices, person or persons duly authorised in that behalf, one or more fine or fines, *sur connuzance de droit come ceo*, &c. with proclamations to be thereupon had according to the form of the statute in such case provided, or such other fine or fines, and in such other manner and form as the circumstances of the case may require, of all and singular the messuages, lands, tenements, and hereditaments hereinbefore granted and released, or otherwise assured, or intended so to be, with their and every of their appurtenances by such apt and proper names, quantities, qualities, and other descriptions as shall be sufficient and proper, effectually to comprise and pass the same respectively. AND which said fine or fines [so as aforesaid, or in any other manner to be levied, and also all and every other fine or fines, conveyances, and assurances in the law whatsoever, already or hereafter to be had, made, levied, acknowledged, suffered, or executed of the same messuages, lands, tenements, and hereditaments, or any of them, or any part thereof, by or between the parties to these presents, or any of them, or whereunto they or any of them are, is, or shall be party or parties, privy or privies,] shall from and after the perfecting thereof, be and enure, and be adjudged, deemed, construed, and taken to be and enure to the use of them the said (*trustees*) and their heirs, upon the trusts, and for the ends and purposes hereinbefore declared or intended concerning the same hereditaments and premises, until good and effectual conveyances shall be executed thereof to any purchaser, mortgagee, or other person or persons of the said premises,

(*trustees*) or the survivor (15) of them, or the heirs, executors, or administrators of the survivor of

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and then and thenceforth to the use of such purchaser, mortgagee, or other person or persons respectively, and their, his, or her heirs, or as he, she, or they shall direct, freed and absolutely discharged of and from all right and title of or to dower, and all estates tail," &c. (*if so*), and see *ante*, p. 48, n. (64), *post*, p. 436.

If the lands lie in a county palatine or other peculiar jurisdiction, see variations, *ante*, Vol. II. No. XXXI.

If a mortgagee or other incumbrancer be a conveying party, add a covenant by him that he has not incumbered, as, Incumbrancer party.

"AND the said (*mortgagee*) for himself, his heirs, executors, and administrators, doth hereby covenant and declare to and with the said (*trustees*) and their heirs, that he the said (*mortgagee*) hath not at any time heretofore made, done, covenanted, or knowingly suffered or occasioned, or been party or privy to any act, deed, matter, or thing whatsoever, whereby, or by means whereof, the messuages, &c. hereby released or otherwise assured, or intended so to be, or any part thereof, or any estate or interest therein, are, or is, or can, or may be impeached, charged, incumbered, or prejudicially affected in any wise howsoever, save only in respect of the said in part recited conveyance or assurance made to him by way of mortgage as aforesaid."

If part of the premises be copyhold, add here a covenant to surrender them, for the form of which covenant, see *ante*, p. 195, or *post*, rider (B), p. 437. Copyholds.

If leasehold premises be comprised in the deed, add here an assignment of them, as *ante*, p. 223, or *post*, No. VI. Leaseholds.

If personalty is also intended to be assigned, see *post*, No. VII. Personalty.

(15) Powers being strictly construed, a power of sale given to several trustees and their heirs should be made to extend to the survivor of them, as it otherwise cannot be executed by such survivor, *Townsend v. Wilson*, 3 Mad. 261; 1 Bar. and Ald. 608, S. C. Power of sale.

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them, or their or his assigns (16), [or any attorney or attorneys by them or him lawfully authorized in that behalf (17)], at and by their or his own proper and sole discretion and authority, [and without any other consent or concurrence of the said (*debtor*) his heirs, executors, or administrators, or of his said creditors, or any or either of them, than is given or expressed, by their being parties hereto (18),] do and shall immediately or at any time or times after the sealing and delivery of these presents, make sale and dispose of all and every the said messuages, lands, tenements, hereditaments, and premises hereby granted and released, or otherwise assured, or intended so to be, or any of them, or any part

More than two
trustees.

(16) If there are more than two trustees, say,

“ And the survivors and survivor of them and the heirs, executors, or administrators, of the last survivor,”
throughout the precedent.

Trust cannot be
executed by
attorney.

(17) As it is holden that a power of sale given to trustees cannot be executed by attorney, *quia delegatus non potest delegare*; it is proper, where circumstances are likely to render a personal exercise of that authority inconvenient, to give them an express authority to execute the trust by attorney; and see *Paliser v. Ord*, Bunb. 166.

Debtor, &c.
need not concur
in conveyance
to purchasers.

(18) On a conveyance to trustees in trust to sell for the benefit of creditors, where the purchaser is exonerated by the deed from seeing to the application of the purchase-money, the trustees may make a good title (and *semb.* conveyance) without the creditors being parties, although their names and debts be specified in an underwritten schedule; the words within brackets therefore are unnecessary. *Banks v. Lord Rokeby*, 2 Mad. 227, and *vid.* *Lewis v. Moxam*, 1 Mer. 179, and Co. Lit. 290, s. 1; and so also without the debtor (or his heir at law) in case of his decease, concurring. *Levy v. Lindo*, 3 Mer. 61. *Goodman v. Grierson*, 2 Bal. and Beat. 279.

thereof respectively, and the fee-simple and inheritance thereof, or for a life or lives, or term or terms for years, with or without any premium or free-gift, or at any yearly or other rent, or both, or for any other estate or interest whatsoever therein, and either together and in one lot or parcel, or separately, and in several lots or parcels, and either by public sale or private contract, or partly by public sale and partly by private contract, and for such price or prices, or sum or sums of money as the said (*trustees*), or the survivor of them, or the heirs, executors, or administrators of the survivor, or their or his assigns shall think fit, with full power and authority to buy in all or any part of the hereditaments and premises which shall have been put up or exposed to sale by public auction, and re-sell or offer again to sale the same, in all, any, or either of the modes aforesaid, either immediately and at the same time or times, or at any future time or times, and to rescind any agreement entered into by private contract, without being liable in any of the said cases to answer for any loss or diminution in price which may thereby happen or be occasioned, and also like power and authority to mortgage the said hereditaments and premises, or any of them, or any part thereof, either in fee or for any term or number of years, for such sum or sums as they the said trustees or trustee shall think fit, and at any time thereafter to sell and absolutely dispose of, by any or either of the ways aforesaid, the hereditaments so mortgaged, or any

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part thereof, either subject to the said mortgage or mortgages, or discharged therefrom, as he or they shall deem expedient (19). AND with like power and authority, immediately or at any time or times after any person or persons shall have become a purchaser or purchasers, or mortgagee or mortgagees, or lessee or lessees of the said premises or any part thereof, and shall have paid his or their purchase or consideration money, to convey and assure, either in person or by such lawful attorney or attornies as aforesaid, the same hereditaments and premises, unto or for such purchaser or purchasers, mortgagee or mortgagees, or lessee or lessees, and to his, her, or their heirs, executors, administrators, or assigns, or to such other person or persons, and in such manner and form as he or they shall lawfully direct or require (20), and to sign, seal, deliver and execute all proper and sufficient deeds, writings, conveyances, and

Mortgage and
sale.

(19) As it has been doubted whether, under a trust to sell or mortgage for payment of debts, and a mortgage has been first resorted to, the trustees can afterwards sell for the purpose of paying off such mortgage, *Pulk v. Lord Ainton*, 12 Ves. 48, by reason that trust deeds for payment of debts, extend to such debts only as are due at the time, *Purfoy v. Purfoy*, 1 Vern. 28, 2 Dick. 28, it is proper in deeds for this purpose expressly to give them such power.

Trustees should
convey to
purchaser's ap-
pointment.

(20) As purchasers now usually take the estate to uses to bar dower, the trustees should be authorized to convey to such persons as the purchaser, &c. shall appoint, and not, as is usual in the old forms, to the purchaser and his heirs; because it being a rule of law that powers are to be strictly pursued, it may otherwise be questioned whether they can convey the estate in any other manner than to the purchaser himself.

assurances, which may be requisite for that purpose, and in the mean time and until such sale or sales, or other disposition shall be made or take place, and as to such parts of the said premises, as shall from time to time remain unsold or undisposed of, UPON TRUST that they the said (*trustees*) or the survivor of them, or the heirs, executors, or administrators of the survivor, or their or his assigns, do and shall enter into and upon all and singular the same hereditaments and premises, and receive and take the rents, issues, and growing proceeds thereof, to and for the ends, intents, and purposes hereinafter directed or referred to concerning the same (21). AND it is

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(21) As rents which have become due and are in arrear at the time of the conveyance, will not pass by a grant of the land, it is proper, where such arrears are considerable, that they should be expressly assigned, and a power of attorney given to the trustees to receive them, as in the case of other debts and choses in action. The form of which may be as follows :

“ AND THIS INDENTURE FURTHER WITNESSETH, that for carrying the said agreement into more effectual execution, and for the considerations aforesaid, HE the said (*debtor*) HATH granted, bargained, sold, assigned, transferred, and set over, and by these presents DOTH grant, bargain, sell, assign, transfer, and set over unto the said (*trustees*) ALL and every the rent and rents, and arrears of rent, and other sum and sums of money whatsoever, which at the time of the execution of these presents, is and are due and owing to him the said (*debtor*) from all and every or any of the lessees, tenants, or occupiers of all or any of the messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released, or otherwise assured, or intended so to be. AND all the estate, right, title, interest,

Assignment of
rents.

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Power of attorney to receive the rents.

hereby further agreed and declared by and between all and every the parties to these presents,

property, claim, and demand whatsoever, of him the said (*debtor*) in, to, or in respect of the same. To HAVE, HOLD, receive, perceive, and take the said rents, arrears of rent, and sum and sums of money, and other the premises hereby assigned, or mentioned or intended so to be, unto and by them the said (*trustees*) and the survivor of them, and their or his heirs or assigns, as fully and amply to all intents and purposes, as he the said (*debtor*) his heirs, executors, or administrators, could or might have had or holden the same if these presents had not been made; But nevertheless upon such or the like trusts, and to and for such and the same intents and purposes as are by these presents declared or referred to concerning the money to arise by the sale or other disposition hereinbefore directed to be made of the said hereditaments and premises, and of the rents, issues, and profits thereof in the mean time, [and to and for no other use, trust, intent, or purpose whatsoever.] AND in order to enable the said (*trustees*) the better to recover and receive the rents and monies lastly hereinbefore assigned, HE the said (*debtor*) HATH made, constituted, and appointed, and by these presents DOth make, constitute, and irrevocably appoint, and in his place and stead put and depute the said (*trustees*) jointly and each of them severally, and the heirs of the survivor of them, and their and his assigns, the true and lawful attorney and attornies of him the said (*debtor*), in his own name, or in the name or names of his heirs, executors, or administrators, or otherwise, to ask for, demand, receive, and take all and every the said rents and arrears of rent, and other sum and sums of money which are now due to the said (*debtor*), from all, every, or any of the lessees, tenants, or occupiers of the several messuages, lands, and hereditaments hereinbefore granted and released, or intended so to be, or any of them, or any part thereof, and upon payment thereof or of any part thereof, to give receipts, releases, or other discharges

and particularly by the said (*debtor*), that all and every the contracts and agreements, sales, mortgages, dispositions, conveyances, assurances, acts, deeds, matters, and things whatsoever, which shall or may be entered into, made, done, or executed by the said (*trustees*), or the survivor of them, or the heirs, executors, or administrators of such survivor, or their or his assigns, alone and without the concurrence of the said (*debtor*) his

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for the same, in the name or names of the said (*debtor*) his heirs, executors, or administrators, and to make all usual and reasonable allowances for taxes, repairs, and other deductions, in respect of the said premises, and on non-payment thereof, then in the name or names of the said (*debtor*) his heirs, executors, or administrators, or otherwise, to employ and make use of all such lawful remedies, ways, and means whatsoever, for the recovery and compelling payment of the same, either by entering into and upon the said premises, in respect whereof such rent or rents, or sum or sums shall be due, or distraining for the same, or by bringing actions against the said tenants respectively, or otherwise howsoever, as to them the said (*trustees*) or the survivor of them, or the heirs of such survivor, or their or his assigns shall seem meet or expedient, with full power to depute and appoint any other attorney or attornies, agent or agents, in their or his room or stead, for all or any of the purposes aforesaid, and generally to do, or order and cause to be done all and every or any other matter and thing whatsoever, in or concerning the premises which he the said (*debtor*) could do or have done, if these presents had not been made, he the said (*debtor*) hereby ratifying and confirming, and promising and agreeing to ratify, confirm, and allow all and whatsoever his said attorney and attornies respectively shall lawfully do or cause to be done in or about the premises, by virtue of these presents."

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heirs, executors, or administrators, relative to or in respect of the messuages, lands, tenements, hereditaments, and premises hereby granted and released, or otherwise assured, as aforesaid, or intended so to be, or any of them, or any part thereof, shall be as valid and effectual to all intents and purposes whatsoever, as if he the said (*debtor*) his heirs, executors, or administrators, had, made, done, executed, or joined or concurred in the same respectively, and that the person or persons to whom the hereditaments and premises, or any part thereof, shall or may be conveyed or otherwise assured, and their respective heirs, executors, administrators, and assigns, shall have, hold, and enjoy the same against the said (*debtor*) his heirs, executors, and administrators, and all and every person or persons lawfully or rightfully claiming or possessing any estate, right, title, or interest therein or thereto, from, through, under, or in trust for him, them, or any of them, in as ample, secure, and beneficial a manner, as if he the said (*debtor*) his heirs, executors, or administrators had executed or joined in the several contracts, dispositions, conveyances, or assurances thereof, or other acts or things relating thereto(22).

Incumbrancer
party.

(22) If an incumbrancer be an assenting party, add,

“And the said (*mortgagee*, &c.) for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, declare, and agree, to and with the said (*trustees*) and their heirs and assigns, that he the said (*mortgagee*) his executors, administrators, or assigns, shall and will, upon receipt of the said principal sum of £ and interest,

AND it is hereby further agreed and declared, by and between the said parties hereto, so far as they are respectively interested or concerned, that the receipt or receipts of the said (*trustees*) or of the survivor of them, or the heirs of such survivor, or of their or his assigns, or of any or either of them, solely acting in the execution of the

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Receipts of
trustees a suf-
ficient dis-
charge.

and all costs and expenses incurred by reason of default having been made in payment thereof at the time, in the said in part recited indenture of the day of , appointed for that purpose, release, convey, and assure, or join and concur in releasing, conveying, and assuring, all and every the hereditaments and premises therein comprised, with the appurtenances, and all the estate and interest, claim and demand, both at law and in equity, of him the said (*mortgagor*), in, to, or concerning the same, unto any purchaser, mortgagee, or other person whomsoever, in such manner and form as he or they, or the trustee or trustees thereof, under or by virtue of these premises, or otherwise, shall reasonably require" (†).

(†) Although it will not always be proper that incumbrancers should join in the conveyance to the trustees (see *ante*, p. 399, n. (†)), yet they should covenant that they will do so, upon a sale being made pursuant to the trusts, and should also join in the declaration, that the receipt of the trustees shall be a good discharge to such purchasers, and exonerate them from seeing to the application of the money, for otherwise the purchasers, by having notice of the incumbrances, and of the trust for discharging them, would in equity be bound to see them paid, which could be done only by his paying to each incumbrancer his portion of the purchase-money; and which appears to have been the mode practised by Mr. Bradley. See *Bradl. Point Bk.* p. 72, pl. 148, but the necessity of doing this is prevented by the above mode,

Incumbrancers
parties.

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trusts aforesaid (23), shall from time to time, and at all times be a good and sufficient discharge, and good and sufficient discharges to any purchaser or purchasers, mortgagee or mortgagees, lessee or lessees, or other tenant or occupier of the said hereditaments and premises, or any of them, or any part thereof, and to his, her, or their respective heirs, executors, administrators, and assigns, for so much of the purchase or mortgage money, or rents and profits, or other monies, as shall therein be acknowledged to be received; and that the purchaser and purchasers, mortgagee or mortgagees, or other person or persons paying the same, his, her, or their heirs, executors, admi-

Liability of purchaser to see to application of purchase money.

(23) If there be no declaration that the receipt of the trustees shall be a sufficient discharge for money paid to them, any purchaser, &c. under the deed, (if the debts be scheduled, which they ought to be,) will be bound to see the money duly applied, *Dunch v. Kent*, 1 Vern. 260. *Spalding v. Shalmer*, *ibid.* 301; and *vid. ibid.* 303, n. (1). See also *Cotterell v. Hampson*, 2 Ch. Ca. 115; and 2 Vern. 5. S. C. and *vid.* *Williamson v. Curtis*, 3 Brow. Ch. Rep. 96. *Hardwick v. Mynd*, 1 Anstr. 109. *Lord Braybroke v. Inskip*, 8 Ves. jun. 417. This declaration will not, however, be of any avail with respect to any real incumbrances affecting the estate, as mortgages or judgments, prior to the deed of trust; in which case therefore it will be incumbent on the purchaser, &c. to see the consideration money applied in discharge of such incumbrancers, unless they be parties to the conveyance; as mentioned in the preceding notes, pp. 399, 417. (†).

Receipt of acting trustees to be sufficient.

And the receipt of the acting trustees alone for the time being is declared to be a discharge to prevent the necessity there would otherwise be for the signature of all the trustees who had accepted of the trusts, although they had since resigned, and released their interest to their co-trustees; see *Crew v. Dicken*, 4 Ves. jun. 97. Co. Lit. 113. a.

nistrators, or assigns, shall not afterwards be answerable or accountable for the loss, mis-application, or non-application thereof, or of any part thereof, nor be in any manner obliged to inquire into the authority, necessity, or expediency of, or for any sale, mortgage, or other disposition of the same premises, or any part thereof, or whether the same be or be not more than sufficient to answer or satisfy all or any of the trusts or purposes of these presents (24); nor be affected or prejudiced by any notice he or they shall or may have of the same being unnecessary or inexpedient, or forbidding any such sale or other disposition, or of inquiring into any other circumstances attending any such sale or disposition; but every such purchaser, mortgagee, lessee, and other person or persons, his or her heirs, executors, administrators, and assigns, shall be for ever thereafter freed and discharged from all claims and questions in respect of every or any the matters and things aforesaid, by or from the said (*debtor*) his heirs, executors, or administrators, and all and every person and persons thereafter claiming or possessing any estate or interest in the said premises or any part thereof, from,

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(24) The words within brackets are generally inserted for precaution sake, it having been formerly held, *Culpepper v. Aston*, 3 Ch. Rep. 115, that the purchaser, where he had notice of the debts, was answerable for more being sold than was requisite to pay them; but as it is now settled that the purchaser is not liable to enter into the account between the debtor and his creditors, they are not necessary. See *Johnson v. Blake*, Prec. Ch. 142. *Spalding v. Shalmer*, 1 Vern. 303. *Cotterell v. Hampson*, 2 *ib.* 5.

Purchaser not
liable to enter
into accounts.

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Trustees to
stand possessed
of the money
upon trusts de-
clared in deed
of even date.

under, or in trust for him or them, or by or through his, their, or any of their acts, means, or defaults. AND it is hereby further declared and agreed by and between all and every the parties to these presents, to be the true intent and meaning thereof, and the said (*debtor*) and also the several parties hereto of the third part do, and every of them respectively doth hereby direct and declare that the said (*trustees*) and the survivor of them, and the heirs, executors, and administrators of the survivor of them, and their and his assigns, shall stand possessed of, and be interested in all and every the sum and sums of money which shall or may arise by any sale or sales, mortgage or mortgages, or other disposition which shall be made or take place of the messuages, lands, tenements, hereditaments, and premises hereby granted and released, or otherwise assured, as aforesaid, or intended so to be, or any of them, or any part or parts thereof, or by or out of the rents, issues, or other proceeds thereof, UPON the several trusts, and to and for the several ends, intents, and purposes, and under and subject to the several provisos, restrictions, declarations, and agreements “ which are declared, contained, or expressed concerning the same, in or by a certain indenture of three parts, already prepared and engrossed, and bearing or intended to bear even date with these presents, and made or intended to be made between the said (*debtor*) of the first part, the said (*trustees*) of the second part, and the several other persons therein named as creditors of the said (*debtor*) of the third part,

and referring, or meant and intended to refer hereunto, as made and executed in pursuance hereof (25).” AND the said (*debtor*) doth hereby for himself and his heirs, declare and direct that immediately upon the execution of these presents, and at all times thereafter, until the intents and purposes thereof, and the trusts of the said indenture lastly hereinbefore referred to, shall have been fully executed, all the estate,

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Declaration
that the estate
to be sold shall
be considered
as personalty.

(25) It is proper that the conveyance and the declaration of the trusts of the money to arise by sale, should be by separate instruments, in order that the conveyance may be delivered to the purchaser as part of his title deeds, and the deed of trust retained by the trustees for their guidance and indemnity in the application of the purchase money; see *post*, p. 439.

Trusts of the
money.

But if the trusts of the money are intended to be declared in the deed of conveyance, which, for brevity sake, is sometimes done, instead of the lines within inverted commas, say,]

Trusts by same
deed.

“ Hereinafter declared or expressed concerning the same, (that is to say)” and see *post*, No. IV. (A), p. 443, marg. *, also No. V.

If the debtor took the estate to himself and a trustee to bar dower, add here a covenant by such trustee that he has not incumbered, as,

Dower-trustee.

“ And the said (*trustee*) for himself, his heirs, executors, and administrators, doth hereby covenant and declare to and with the said (*trustees*) their heirs and assigns, that he the said (*trustee*) hath not at any time heretofore made, done, or knowingly occasioned or suffered, nor been party or privy to any act, deed, matter, or thing whatsoever, whereby or by means whereof the messuages, &c. hereinbefore expressed or intended to be by him released, or otherwise assured, or the appurtenants thereto, or any estate or interest in the same are, or is, or can, or may be incumbered, charged, or prejudicially affected in any manner howsoever.”

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Covenant by
debtor that he
is seised in fee.

right, title, and interest of him the said (*debtor*) in and to the said hereditaments and premises hereby granted and released, or otherwise assured, or intended so to be, and also the rents, issues, and growing proceeds thereof, until the same shall be sold or disposed of under the trusts hereinbefore contained, shall as between the real and personal representatives of him the said (*debtor*) be considered as or in the nature of money or personal estate, and belong and go to his executors and administrators, subject to the trusts aforesaid, in preference to and exclusion of his heirs at law, although no sale thereof shall have been made during the lifetime of him the said (*debtor*). AND the said (*debtor*) for himself, his heirs, executors, and administrators, doth hereby covenant, declare, and agree with and to the said (*trustees*) their heirs, executors, administrators, and assigns, in the manner following (26), (that is to say) that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore, made, done, executed, or knowingly occasioned, suffered, or omitted by him the said (*debtor*) [or any of his ancestors (27),] or any of his or their trustees or trustee, to the contrary,

Wife.

(26) If the wife of the debtor be a party, make these covenants accord with that circumstance, as *ante*, Vol. II. No. XXX. p. 20.

Ancestors, &c.

(27) If the debtor took the estate by descent as a purchaser, omit the words "or any of his ancestors;" and if he took by devise, instead of "any of his ancestors," say, "or the said (*testator*) deceased," here and throughout.

he the said (*debtor*) (28) at the time of the sealing and delivery of these presents, is lawfully, rightly, and absolutely seised in his demesne as of fee, in his own right, and to his own use, of, and in all and singular the messuages (29), lands, tenements, hereditaments, and premises hereinbefore granted and released, or otherwise assured or mentioned, or intended so to be, as of, in, and for a good, perfect, clear, absolute, and indefeasible estate of inheritance in fee-simple in possession (30), and in severalty, without there being any manner of trust, condition, power of revocation, or of limiting any new or other use or uses, or any other qualification, restriction, matter, or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever, (leases and agreements for leases, of which counterparts have been produced unto the said (*trustees*) their counsel or solicitor, at or before

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(28) If the debtor took the estate to himself and a trustee, Dower trustee. say,

“He the said (*debtor*) and the said (*trustee*) or one of them, are or is lawfully, &c. seized in their or his demesne,”
&c. *as above*.

(29) If the conveyance be of a moiety or other portion only of the estate, see Vol. I. No. XXVI. Moiety, &c.

If of a remainder or reversion, see *ib.* No. XXIV.

Remainder, &c.

(30) If part of the land be copyhold, add,

Copyholds.

“And of and in the copyhold or customary parts thereof, of and for a good and customary estate of inheritance, in fee-simple, according to the custom of the said manor of .”

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And hath right
to convey.

the sealing and delivery of these presents (31) only excepted). AND also, that for and notwithstanding any such act, deed, matter, or thing as aforesaid, he the said (*debtor*) now hath in himself full power and lawful and absolute right and title (32) to grant, bargain, sell, release, and confirm all and singular the said hereditaments and pre-

Wife.

(31) If the grantor's wife be entitled to dower, say,

“ And such right or title to dower as she the said (*wife*) the wife of the said (*grantor*) has in or out of the said premises, and which is intended to be barred and extinguished by the fine hereinbefore agreed to be levied as aforesaid.”

Mortgage.

If the premises be in mortgage, say,

“ And save and except the said in part recited mortgage of the day of [*or a certain indenture of demise, or indentures of lease and release (as the case may be)* by way of mortgage, bearing date on or about the day of , made between, &c. whereby the said hereditaments are demised, conveyed to, and are now vested in the said (*mortgagee*) for securing the principal sum of £ and interest, as therein expressed.”]

Annuity.

If they be chargeable with an annuity, say,

“ And save only and except a certain annuity or yearly rent charge of £ payable to, &c. during his life (*as the case may be*) to him granted by a certain indenture bearing date, &c. and made between, &c.”

Trustee.

(32) If the grantor took the estate to himself and a trustee, say,

“ AND that they the said (*debtor*) and (*trustee*) have in themselves respectively full power and authority to limit, appoint, release and assure the same hereditaments and premises to the uses, upon the trusts, and to and for the ends, intents, and purposes, and in the manner hereinbefore expressed concerning the same.”

mises, and the possession, reversion, and inheritance thereof, unto and to the use of the said (*trustees*) their heirs and assigns (33), upon the trusts and in the manner aforesaid, and according to the true intent and meaning of these presents. AND further, that until the said trust premises shall respectively be sold, mortgaged, or otherwise disposed of, in pursuance of the trusts hereinbefore declared for that purpose, the same and every part thereof, with their appurtenances, shall be and remain to the uses, upon the trusts, and for the ends, intents, and purposes hereinbefore declared or expressed concerning the same, and be holden and enjoyed, and the rents, issues, and profits thereof received, taken, and applied accordingly; and from and immediately after any such sale or disposition shall be made, and conveyances executed thereof, it shall be lawful for the purchaser or purchasers, mortgagee or mortgagees thereof, his or their heirs, executors, administrators, and assigns, from time to time, and at all times thereafter, peaceably and quietly to enter into and upon, and hold, possess, and enjoy all and singular the same hereditaments and premises, with their and every of their respective rights, members, appendances, and

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Quiet enjoyment.

(33) If part of the premises be copyhold, say,

Copyholds.

“ And to surrender and assure all and singular the copyhold or customary hereditaments and premises hereinbefore agreed or covenanted to be surrendered, with their respective appurtenances, to the use of the said (*trustees*) and their heirs, upon the trusts,” &c. *as above*.

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Free from in-
cumbrances.

appurtenances, and to receive and retain the rents, issues, and proceeds, which shall arise or be payable for or in respect of the same, to and for his and their own use and benefit, according to the true intent and meaning of the deed or conveyance which shall be to him or them made thereof, and that without any manner of hindrance, interruption, disturbance, claim, or demand whatsoever, by or from the said (*debtor*) or his heirs, or any person or persons, now or hereafter lawfully, equitably, or rightfully claiming or possessing any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or concerning the said hereditaments and premises, or any part thereof, from, through, under, or in trust for him, them, or any of them, [or any of the ancestors of the said (*debtor*)] (other than through, under, or by virtue of any such leases or agreements for leases as aforesaid). AND also free and clear, and clearly and absolutely discharged and exonerated, or otherwise by and at the expense of the said (*debtor*) his heirs, executors, or administrators, effectually defended, protected, and indemnified of, from, and against all [former and other feoffments, gifts, grants, bargains and sales, releases, settlements, mortgages, demises, leases, contracts, devises, wills, conveyances, assurances, descents, uses, trusts, limitations, entails, conditions, estate, right and title of or to dower, remainders, reversions in the crown or elsewhere, judgments, decrees, recognizances, statutes, extents, executions, sequestrations, elegits, debts of record, debts due to the king or any of his predecessors, legacies,

portions, annuities, rents of all kinds, forfeitures, rights of entry, and cause and causes thereof, fines, amerciaments, and all and singular other] estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore have been, or which at any time hereafter shall or may be made, created, executed, committed, occasioned, or suffered by or with the procurement or privity of the said (*debtor*) or any of his ancestors or any other person or persons, now or hereafter rightfully claiming or possessing any estate, right, title, or interest, either at law or in equity, from, through, under, or in trust for him, them, or any of them, (such leases and agreements as aforesaid, the land tax and sewers' rate, [and any future tax upon property or income, to become due or payable for or in respect of the same premises] only excepted). [(34) AND further, that neither he the said (*debtor*) nor any other person or persons lawfully claiming or to claim by, from, or under him, shall or will at any time hereafter, make, do, execute, commit, or willingly suffer any act, deed, matter, or thing whatsoever, whereby the execution or performance of the trusts hereby created or declared shall or may be defeated, prevented, or hindered from taking effect according

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And that he
will not do any
act to defeat
the trusts.

(34) The covenants included within brackets are usually found in the forms of conveyances in trust for creditors; but the objects they are intended to meet seem to be so completely provided for by the covenants for quiet enjoyment and further assurance, that they may in all cases, and more particularly where the trusts of the money to arise by sale, &c. are declared by a separate deed, be safely omitted.

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to the true intent and meaning thereof, nor revoke or make void any of the powers or authorities hereby given, or which shall or may hereafter be given to the said (*trustees*), nor receive, discharge, or compound for any of the rents or sums hereby assigned, nor receive, sue for, or intermeddle with the same, or any of them, nor disavow, discontinue, or become nonsuit in any action or suit to be brought in respect thereof, nor act or interfere in or about said premises aforesaid, or any of them, otherwise than as the said trustees or trustee for the time being shall require concerning the same; and that all and singular the said hereditaments and premises, and other the property and estates aforesaid, shall at all times be holden and enjoyed by the said trustees or trustee upon and for the trusts aforesaid, without the act, suit, or intercession of him the said (*debtor*) or any person or persons claiming or to claim by, from, or under him, in any manner howsoever other than as lastly aforesaid. AND further, that he the said (*debtor*) his heirs, executors, and administrators, shall and will at all times at the request of the said trustees or trustee be aiding and assisting him and them in the execution of the trusts aforesaid, and shall and will ratify and confirm all and whatever they or any of them shall lawfully do or cause to be done in or about the same (35).] AND moreover, that he the said

Further
assurance.

Life estate.

(35) If the debtor be tenant for life only under a marriage settlement, &c. add,

“ AND that he the said (*debtor*) shall not nor will at any

(*debtor*) his heirs, executors, and administrators, and all and every other person or persons, now or at any time hereafter rightfully claiming or possessing any estate, right, title, charge, or interest,

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time or times hereafter sell, dispose of, or convey in exchange, or permit to be sold or disposed of, or conveyed in exchange, without the consent in writing under the hand of the said acting trustees or trustee for the time being, to be attested by two or more credible witnesses, being first had and obtained for that purpose, the said messuages, &c. or any part thereof, or any interest therein, in any manner howsoever. PROVIDED ALWAYS, and it is hereby expressly declared and agreed by and on the part of the said (*debtor*) that in case the same messuages, &c. or any part or parcel thereof respectively, shall at any time or times, be sold, or otherwise disposed of, or varied, or exchanged by the trustees or trustee thereof for the time being, and other messuages, &c. purchased therewith, in pursuance of any of the trusts, powers, or authorities in the said in part recited indenture of settlement [or will] contained, or in case any money to arise by any such sale or other disposition to be made of the said premises, or any part thereof, shall be invested in Bank annuities, or other funds or securities, then and in either of the said cases the money which shall be produced by any such sale or disposition of the said hereditaments, or any part thereof, and all and every the hereditaments, funds, and securities whereupon such money shall be laid out or invested, and the rents, issues, and profits, and dividends, interests, and proceeds thereof respectively, shall at all times, and from time to time during the subsistence of the trusts of these presents, be and remain subject to and bound by these presents, and the several clauses, provisos, and agreements hereinbefore contained, in like manner in all respects as the messuages, lands, and hereditaments, and rents, issues, and profits, hereinbefore particularly described or referred unto, are or is hereby made subject to and bounden thereby, and shall be sold, disposed of, assigned, and assured

If the premises sold or exchanged, the new premises to be charged in like manner.

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at law or in equity, in, to, out of, upon, or respecting the hereditaments and premises hereby granted and released, or otherwise assured, or intended so to be, or any part thereof, from, through, under, or in trust for him, them, or any or either of them, [or any of the ancestors of the said (*debtor*),] (other than persons claiming or entitled under or by virtue of such leases or agreements for leases as aforesaid, so far as concerns

for all the estate and interest of him the said (*debtor*) therein accordingly."

Life insurance.

If by reason of the debtor having a life estate only in the premises, or for any other reason it is intended to insure his life, add,

Covenant by
debtor to ap-
pear at in-
surance office.

"AND the said (*debtor*) doth hereby further covenant and agree with the said (*trustees*) and their heirs, in the manner and form aforesaid, that he the said (*debtor*) shall and will at any time or times hereafter, at the request of the said trustees or trustee for the time being, or any or either of them, and upon having reasonable notice given to him thereof, appear in person at any office or offices of insurance within the cities of London or Westminster, or send or cause to be sent, to any such office or offices, notice in writing of his place of abode, together with a certificate, or other satisfactory document of the state of his health, in order that he or they the said trustees or trustee, may insure any sum or sums of money upon the life of him the said (*debtor*) if he or they shall think proper so to do. AND that in case of any such assurance being made, he the said (*debtor*) shall not nor will leave the United Kingdom of Great Britain and Ireland, without giving unto them the said trustees or trustee one calendar month's previous notice thereof, nor do or cause to be done, any act or thing whatsoever, whereby the said assurance shall or may be vacated, annulled, rendered void or voidable, or otherwise prejudicially affected in any manner howsoever."

their respective estates or interests under or by virtue of the same) shall and will from time to time, and at all times hereafter upon every reasonable request of the said (*trustees*) or of the survivor of them, or of the heirs of such survivor, or their or his assigns, or other the said trustees or trustee for the time being of the said trust premises, but at the proper costs and charges of the said (*debtor*) his heirs or assigns, make, do, acknowledge, levy, suffer, execute, and perfect, or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected, or join, concur in, and assent unto, with all necessary and proper dispatch, all and every such further and other lawful and reasonable acts, deeds, conveyances, matters, and things whatsoever, [whether by fine or fines, with or without proclamations, common recovery or common recoveries, deed or deeds enrolled or otherwise, feoffment, release, confirmation, declaration, or limitation of or to any use or uses, or other assurance or assurances, of record or not of record,] for the further, better, more perfectly, fully, and absolutely or satisfactorily granting, releasing, conveying, confirming, and assuring the same hereditaments and premises, and every or any part or parcel thereof, and the possession, reversion, and inheritance of the same, with their and every of their respective rights, privileges, members, appendances, and appurtenances unto, and to and for the use of the said (*trustees*) their heirs and assigns, upon and for the trusts, intents, and purposes hereinbefore expressed or intended concern-

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ing the same, or unto and to and for the use of, or in trust for any purchaser, mortgagee, or other person or persons to whom the same shall be disposed of, their, his, or her heirs or assigns, (but at his or their own proper costs and charges) in such manner and form as they the said trustees or trustee, purchaser, mortgagee, or others, or their or his counsel in the law, (being of the degree of a barrister) shall reasonably advise and require, and prepare and tender (if the nature thereof permit) for signature and execution ; [so that such further assurance or assurances, or any of them, do not contain nor imply any further or other warranty or covenant, than against or on the part of the person or persons who shall be required to make or execute the same, his, her, or their devisors, ancestors, heirs, executors, and administrators, and his, her, or their own respective acts, deeds, omissions, or defaults ; and so that the person or persons, who shall be required to make or execute any such assurance or assurances, be not obliged to go from his, her, or their then place or respective places of abode for the making or executing the same without a reasonable and sufficient sum being previously paid, tendered, or secured to him, her, or them for or in respect of his, her, or their time, trouble, and expenses.]

Concurrence of
debtor in sales
not requisite.

PROVIDED ALWAYS nevertheless, that the joining or concurrence, or assent of him the said (*debtor*) or of his heirs, in or to any conveyance or assurance to any purchaser, mortgagee, or other person or persons to whom the said hereditaments, or any part thereof, shall be sold or disposed of, or in-

tended to be conveyed or assured, shall not in any wise be deemed requisite to give effect to the same, but shall be construed to be for the satisfaction only of the person or persons desiring the same. [PROVIDED, lastly, and it is hereby moreover declared by and between the said parties hereto, and these presents are made upon this express condition, that in case any creditor of the said (*debtor*) whose debt doth amount to the sum of £ , or any of such creditors whose debts in the whole do amount to the sum of £ (36), (except only such of them whose debts are under the sum of £ , or who shall choose to rely on their present securities for the same, or who shall be satisfied the same in full) shall not execute or otherwise accede (37) to these presents within the space of calendar months next ensuing the date hereof, if resident within the United Kingdom of Great Britain and Ireland, or within the space of calendar months, if resident elsewhere, then the trusts, declarations, and agreements in these presents contained, relative to the sale or disposition of the hereditaments herein comprised (so far as the same shall not have been carried into effect, but without prejudice

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If creditors do
not come in,
deed to be void.

(36) These blanks should be filled up with such sums as are Sums.
sufficient to support a petitioning creditor or creditors; and see
ante, p. 364, n. (1).

(37) Any act of the creditors expressly and unequivocally as- Signing not
senting to this deed, as accepting a composition under it, or essential.
the like, will be sufficient to substantiate it, although they
should not actually sign it. *Jolly et al. assignees of Norton v.*
Wallis, 3 Esp. Rep. 288; and see *ante*, p. 384, n. (1).

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thereto so far as the same may have been carried into effect, and subject and without prejudice to any sale, mortgage, or other disposition of the same hereditaments, or any part thereof which shall have been previously made thereof, pursuant thereunto) shall be and be considered to be null and void to all intents and purposes whatsoever, and that then and in such case all such parts of the same hereditaments which at the expiration of the said time shall remain undisposed of for any of the purposes aforesaid, shall be conveyed and assured by the trustees or trustee thereof for the time being, unto him the said (*debtor*) his heirs and assigns, or as he or they shall direct or appoint, any thing hereinbefore contained, or any rule of law or of equity to the contrary thereof, in any wise notwithstanding (38).] IN WITNESS, &c.

Avoidance of
deed.

(38) See *ante*, pp. 357, n. (1), 364, n. (1).

Policy.

If a policy of assurance against fire, or on the life of the debtor, is to be assigned, see *ante*, p. 92, rider (D), insert the name of the debtor instead of that of the (*grantor*), and those of the trustees instead of (*trustee*).

Copyholds.
Place of execu-
tion.

Where part of the premises are copyhold, see also *ante*, No. VI.
. It has been observed in a preceding page (see *ante*, p. 376, n. (1), that a conveyance of a debtor's estate in trust for creditors, will, in some cases, constitute an act of bankruptcy; but as it is requisite, to support a commission, that the act of bankruptcy should be committed in England, the deed will not, if it be executed elsewhere, constitute that act; *Inglis v. Grant*, 5 Durnf. and E. 530; *Rust v. Cooper*, Cowp. 629; *Alexander v. Vaughan*, Cowp. 401; *Norden v. James*, Dick. 533; nor will a surrender of *copyholds*, although fraudulently made; for as this species of property is exempt from liability to legal process, such surrender has no tendency to defeat the other creditors; and see *ex parte Cockshot*, 3 Brow. Ch. Rep. 502.

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(A) If the debtor be tenant in tail of the premises, and it be necessary or thought advisable that a recovery should be suffered to bar the intail (and see *ante*, Vol. I. No. XXII. notes) instead of the covenant to levy a fine, (*ante*, p. 407, n. 13) convey the premises to a tenant to a præcipe for suffering such recovery, as,

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Recovery.

“AND THIS INDENTURE FURTHER WITNESSETH, that for docking, barring, and destroying all estates tail of and in the same messuages, lands, tenements, and hereditaments, and all remainders and reversions expectant or depending thereupon, and all conditions and collateral limitations (if any) annexed to or affecting the same [and in consideration of the sum of ten shillings of such lawful and current money aforesaid, to the said (*debtor*) in hand at the same time paid by the said (*tenant to the præcipe*) the receipt whereof is hereby acknowledged,] HE the said (*debtor*) HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant, bargain, sell, alien, and release unto the said (*tenant to the præcipe*) and his heirs, ALL, &c. as *ante*, p. 404, TO HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and all and singular other the premises hereby granted and released, or otherwise assured, or intended so to be, [with their and every of their appurtenances] unto and by him the said (*tenant to the præcipe*) and his heirs, to and for the use and behoof of him the said (*tenant to the præcipe*) his heirs and assigns for ever. To the intent that he the said (*tenant to the præcipe*) may become and be a perfect tenant to the freehold of all and singular the same premises, in order that one or more common recovery or common recoveries, with double or more voucher or vouchers, may forthwith at the expense of the said (*debtor*) or his heirs, be had and suffered of the said premises, by proper and sufficient names and descriptions upon a writ or writs of entry, *sur disseisin in le post*, in which the said (*trustees*) shall demand the same against the said (*tenant to the præcipe*) who shall vouch to warranty the said (*debtor*)

*Conveyance to
tenant to præ-
cipe.*

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Uses of reco-
very.

who shall vouch the common vouchee, in such manner as is usual in like cases, so that judgment may be given to the said (*trustees*) to recover the said messuages, lands, tenements, and hereditaments hereby conveyed, or intended so to be, against the said (*tenant to the præcipe*) and for the said (*tenant*) to recover in value against the said (*debtor*) and for the said (*debtor*) to recover in value against the common vouchee, and that execution may be awarded and seisin had upon such recovery or recoveries according to the usual course in like cases. AND it is hereby directed, declared, and agreed by and between the parties to these presents, as far as they respectively are interested, that after the recovery or recoveries hereby agreed to be suffered, shall be suffered and perfected, the same and all other recoveries suffered and to be suffered of the same messuages, lands, tenements, and hereditaments, or any of them, either alone or together with other lands or hereditaments, shall as to and concerning the messuages, lands, tenements, and hereditaments hereinbefore released, or otherwise assured or intended so to be, with the appurtenances, be and enure to the use of the said (*trustees*) and their heirs, upon the TRUSTS, "&c. as in the text, p. 407, marg. *; and see also *ante*, p. 144, n. (1).

Tenant for life.

If a tenant for life join in the recovery, see *ante*, Vol. V. p. 228. See also *ante*, Vol. I. No. XXII. p. 307, and Vol. V. No. VII. whence a fuller form may be adopted if required.

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(B.) Variation *where Part of the Premises are Copyhold*,
See *ante*, p. 409.

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If part of the premises be copyhold, add here a covenant to surrender them, as,

“AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, and for further and more effectually securing the payment of the said several debts or sums in the manner hereinafter mentioned, He the said (*debtor*) doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said (*trustees*) their heirs and assigns, that he the said (*debtor*) shall and will [at his own proper costs and expense,] at or before the next general or other court, which shall be hereafter holden in or for the aforesaid manor of _____, in the said county of _____, or other the manor or manors, whereof the lands and hereditaments next hereinafter described, or any of them are holden, and in failure thereof at any other court holden in or for the said manor, when requested by the said (*trustees*) their heirs or assigns, surrender, or cause and procure to be surrendered into the hand of the lord or lords, or lady or ladies of the same manor or manors, according to the custom or several customs thereof, ALL that copyhold or customary messuage, &c. &c. or by whatsoever other name or names, description or descriptions, the same copyhold or customary lands and hereditaments, or any part thereof, now are or is, or heretofore have or hath been called, known, or described; TOGETHER with all and all manner of rights, privileges, easements, advantages, and appurtenances whatsoever to the said messuage or tenement, lands, and hereditaments, or any of them, or any part thereof respectively belonging, or in any wise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore lawfully holden, used, occupied, or enjoyed: To the intent that they the said (*trustees*) shall or may be fully admitted to all and singular the same copyhold

Covenant to
surrender
copyholds.

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or customary lands and hereditaments, to them and their heirs in the manner hereinafter mentioned. AND it is hereby declared and agreed by and between the parties hereto, that the surrender or surrenders so to be made as aforesaid, shall, when made and perfected, be and enure to the use of them the said (*trustees*) their heirs and assigns, to be holden of the lord or lady for the time being of the said manor or manors, according to the custom or customs thereof, under and subject to the customary rents and services to be respectively paid and performed in respect thereof, but nevertheless upon the trusts, and for the several ends, intents, and purposes hereinafter mentioned concerning the same, that is to say, UPON TRUST," &c. as *ante*, p. 408.

DEBTOR
AND
CREDITOR.

No. IV. (A).

Trusts of Money.
(Full Form.)

**Declaration of Trust of Money to arise by Sale of
Freehold Estates conveyed to Trustees for gene-
ral Creditors (1). (Full Form.)**

*Variations where an Incumbrancer joined in the Deed
for Sale.*

*Where there are two or more Debtors in Copartner-
ship.*

Other Variations as in Margin below (2.)

THIS INDENTURE, of three parts, made the

(1) A declaration of the trusts of the money to arise by the sale of an estate conveyed to trustees for the benefit of creditors, is sometimes inserted in the deed of conveyance itself; but as such conveyance will, on sale of the estate, belong to the purchaser, and it is proper that the trustees should, for their own direction, as well as their justification and indemnity, retain in their hands the deed by which the application of the money is directed, it is better that the conveyance of the estate and the declaration of the trusts of the money, should be by separate instruments.

Declaration of
trust should be
by separate in-
strument.

And it is to be observed that where the trusts are declared in the same deed, and the debts are scheduled, the purchaser, by having notice of the specific trusts, will be bound to see the money properly applied, unless care be taken, by some exonerating clause in the deed, to exempt them, *Spalding v. Shalman*, 1 Vern. 301.

(2) See also margins of No. V. (A), *post*.

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Parties.

day of , [*in the year of the
reign, &c. , and] in the year of our Lord
. BETWEEN (*the debtor*) [*or debtors*] of,
&c. [copartners in trade] (1), of the first
part, (*the trustees*) of, &c. being respectively cre-
ditors of the said (*debtor*) [*or debtors*] and also
persons named and appointed on behalf of them-
selves, and other the creditors of the said (*debtor*)
[*or debtors*] as trustees of his estate and effects
for the purposes hereinafter expressed,) of the
second part, and the several persons, creditors
also of the said (*debtor*) [*or debtors*] who by them-
selves, or their respective attornies, have sub-
scribed their names and affixed their seals, or who
shall hereafter subscribe their names and affix
their seals to these presents, of the third part.

Recitals. WHEREAS the said (*debtor*) [*or debtors*, if in co-
partnership] lately carried on the business of
in aforesaid, [in copartnership under
the firm of]. AND WHEREAS the said
(*debtor*) [*or debtors*] is [*or are in their private, &c.*
on their said partnership account] indebted unto
the said several persons, parties to these presents,
of the second and third parts, in several sums of
money or engagements to replace bank annuities,

Brevity.

* Where brevity is particularly desired, those parts of the precedent within brackets may be omitted. See also a shorter form of a deed of declaration of trusts, *post*, No. V. (A).

Copartners.

(1) Such parts of the deed as relate to debtors in copartner-ship, and are too trifling to be subjoined as variations, are placed within brackets; and see *ante*, p. 358, n. (2).

or other property of like description, to the amounts set opposite their respective names in the schedule hereunder written or hereunto annexed (1), and being unable at present to discharge the full amount of the same, hath [or have] agreed to convey and assure all and singular his [or their] real and personal estate and effects (2) unto the said (*trustees*) upon trust for securing the payment thereof, in the manner hereinafter mentioned. AND WHEREAS in pursuance of the said agreement, the said (*debtor*) [or *debtors*] by several conveyances, surrenders, assignments, and assurances in the law (3), bearing even date respectively with these presents, and executed immediately previously to the execution hereof, hath [or have] accordingly conveyed and assured all the freehold, copyhold,

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AND
CREDITOR.

Trusts of Money.
(Full Form.)

Recital of conveyances of
even date.

(1) If there be two or more debtors in copartnership, say, Copartners.

“ And are also in like manner severally indebted on their own private and separate accounts unto some of the several persons who are or are intended to be parties to these presents, of the third part.”

(2) If there be two or more debtors in copartnership, say, Copartners.

“ Belonging to them the said (*debtors*) on account of their said partnership, and also that each of them shall convey, assign, and transfer, all the estate and effects belonging to him on his own private account, and as his separate property, so far as they are interested therein.”

(3) The assurances here alluded to, are the conveyances of the freehold, copyhold, and leasehold property respectively of the debtor, which should be conveyed by separate assurances; see *ante*, p. 395, n. (2). Several conveyances.

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Full Form.)*

and leasehold estates, annuities, policies of insurance, bonds, and other the real and personal estates of the said (*debtor*) [*or debtors jointly and severally*] unto the said (*trustees*) their heirs, executors, administrators, and assigns, according to the nature and quality of the said estates and property respectively, UPON TRUST to make sale of, mortgage, or otherwise dispose of and collect and get in the same respectively, in the manner in the said several conveyances, assignments, and assurances expressed; and in the said several assurances, or some or one of them, it is agreed and declared by and between the several parties thereto, (being the same persons as are parties hereto) that the money to arise and be received by any of the means aforesaid, shall be paid and applied for such ends, intents, and purposes, and in such manner as is declared, or expressed of or concerning the same, in or by a certain indenture then already prepared and engrossed, and bearing or intended to bear even date therewith respectively; AND which said several assurances thereby meant and referred unto these presents, and the several ends, intents, and purposes hereinafter declared, as the said parties hereto do hereby acknowledge. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said several in part recited conveyances and assurances, and for carrying the trusts thereof into effect, the said several persons, parties hereto, do hereby declare and agree it to be the true intent and meaning of them and of these presents, that the said (*trustees*) and the

WITNESS,
Declaration
that the trustees
shall stand pos-
sessed of the
money to arise
by sale of the
debtor's estates,
&c.

survivors and survivor of them, and the heirs, executors, and administrators of such survivor, and their and his assigns, shall stand and be possessed of, interested in, and entitled unto all and singular the sum and sums of money, property, and securities which shall or may arise or be produced by any sale or sales, mortgage or mortgages, or other disposition which shall be made of all or any of the freehold, copyhold, and leasehold estates, or by sale of the timber or underwood of or upon the same, or any part thereof, or by or from the rents, issues, annual and other profits and proceeds thereof until sale or disposition of the same, or which shall be received by or from any policies of insurance, bonds, or other the personal estate and effects of the said (*debtor*) [*or debtors*] (1) under, by virtue, or in pursuance of these presents, or the several conveyances and assurances hereinbefore mentioned or referred to, or any or either of them, and also of, in, or to the rents, issues, and profits of the said freehold, copyhold, and leasehold estates, in the mean time UPON THE TRUSTS, and to and for the ends, intents, and purposes hereinafter declared or expressed concerning the same, (that is to say) UPON TRUST that they the said (*trustees*) and the survivors and survivor of them, and the heirs, executors, and ad-

DEBTOR
AND
CREDITOR.

Trusts of Money.
(Full Form.)

*

UPON TRUST to
defray the ex-
penses hereof.

(1) If there be two or more debtors in copartnership, say, Copartners.

“Estate and effects of the said (*debtors*) as well on their partnership as on their respective separate accounts.”

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AND
CREDITOR.

Trusts of Money.
(Full Form.)

Rents, &c.

ministrators of such survivor, and their and his assigns, and other the trustees or trustee for the time being of the said trust estate, do and shall in the first place (1), retain and reimburse to and for himself and themselves, all costs, charges, and expenses which shall have been incurred or occasioned in preparing and executing these presents, and the said several conveyances, surrenders, assignments, and assurances hereinbefore referred to, and other matters and things preparatory, or in relation to the same respectively, including journeys by them, or either of them, or their surveyors or attorneys, for viewing, valuing, or allotting out the messuages, or tenements, and hereditaments comprised in the several assurances aforesaid, or any part thereof (2). AND then in

Incumbrancer
joins.

(1) If a mortgagee or other incumbrancer join in the conveyance to the trustees, say,

“ Pay and satisfy unto the said (*first mortgages*), &c. his executors, administrators, or assigns, the said principal sum of £ due and owing upon and by virtue of the mortgage of security made to him as aforesaid, and all interest now and thenceforth to become due and payable for the same. And afterwards, and in the next place, do and shall retain,” &c. *as above*.

Trustees entitled
to expenses.

(2) Although no provision be made in a trust deed for repayment to the trustees of their expenses, it is a rule that they are entitled to them, and may take them out of the trust fund, *Balsh v. Hyann*, 2 P. Wms. 455, whether they are of an ordinary or a casual nature, 1 Ball and Beat. 190; but it is not only more satisfactory to trustees to have this expressly stated in the deed, but is in many cases proper in order to give them a lien on the trust fund, in the event of the *cestui que* trust assigning the trust

payment and satisfaction of all rents, taxes, repairs, and other outgoings, of or respecting the same, or insuring the buildings against loss or damage by fire, and salaries, wages, and expenses to clerks, servants, and agents employed in or about the execution of the trusts hereof, and in collecting, recovering, and receiving the rents, issues, and profits of the said premises. AND also of all expenses incurred by or incident to the sale or other disposition of the said messuages, lands, tenements, and hereditaments, whether in making or causing to be made abstracts, or clearing up the titles thereto, producing or obtaining attested copies of deeds or other assurances, getting or causing to be gotten in any outstanding terms or other interests, bills, and reasonable charges of attorneys, solicitors, and agents, in respect thereof, or in or about any suit or suits at law or in equity for obtaining the possession of the said premises, or any part thereof, or enforcing the performance of any contract or agreement with any person or persons who may agree to become the purchaser or purchasers thereof, or for recovering damages for any breach of any such contract or agreement, or in insuring any sum not exceeding £

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AND
CREDITOR.

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(Full Form.)*

Expenses of sale,
&c.

upon the life of the said (*debtor*) [*or debtors,*

estate; in which case the trustees would have no claim upon the assignee, *Trott v. Davison*, 1 P. Wms. 779, 3 Brow. P. C. 449, nor without an express provision for the purpose, will the agents of the trustees be entitled to their expenses out of the trust funds, *Warnell v. Harford*, 8 Ves. 8.

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AND
CREDITOR.

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Then for pay-
ment of debts
rateably by
instalments.

or of either of them,] if they or he, the said trustees or trustee, shall think proper, and other the execution of the several trusts, by these presents, and by the said several conveyances, assignments, and assurances respectively reposed in them respectively. AND after payment and satisfaction of the said costs, charges, disbursements, and expenses, then and in the next place UPON TRUST that they the said (*trustees*) and the survivors and survivor of them, and the heirs, executors, or administrators of the survivor, and their and his assigns, do and shall pay and apply all the residue of the said monies, and all such sum or sums of money as may be received in respect of any such insurances as aforesaid (1), in payment or satisfaction of the debts and demands owing by him the said (*debtor*) [*or them the said debtors*] to such of his [*or their respective*] creditors, as have executed or shall execute these presents, or their respective executors, administrators, partners, or assigns, rateably and in proportion to the amount of the debts owing to them respectively, without any priority or preference of any one or more of them to the other or others of them,

Copartners.

(1) If there be two or more debtors in copartnership, say,

“ In the manner following, (that is to say) IN TRUST that they the said trustees or trustee, do and shall pay and apply the residue of the money arising from the separate estate of each of them the said (*debtors*) respectively, in the payment,” &c. *as above*.

notwithstanding any legal or other priority or preference which may subsist between them (1),

DEBTOR
AND
CREDITOR.

(1) If a man convey his real estates for payment of his debts, without directing in what order they are to be paid, and be indebted by mortgage, judgment, statutes, recognizances, bonds, and simple contracts, the real securities, *i. e.* the mortgages, statutes, judgments, and recognizances, (being a lien upon the land) are to be first paid, and take place according to their priority in order of time, and then the bonds and simple contracts in average; *Child v. Stephens*, 1 Vern. 101; *E. Bristol v. Hungerford*, 2 Vern. 524; neither of these being primarily chargeable upon the real estate, only by his voluntary act and direction; and even a judgment creditor, if the judgment be obtained subsequently to a conveyance by the debtor for payment of his debts, shall be paid only in average; *Stephenson v. Hayward*, Prec. Ch. 310; but where the estate assigned is of a personal nature, bonds are considered in equity as having a priority to simple contracts, because they have a priority at common law; and courts of equity govern themselves by the rules established in that court to which the jurisdiction properly belongs; *Reynish v. Martin*, 3 Atk. 333; and a creditor by covenant is equal to a creditor by bond; *Chevely v. Stone*, 2 Dick. 782; and debts by decree in equity are, in that court, equal to a judgment at law, and to be paid before bonds; *Searle v. Lane*, 2 Freem. 104; *Morrice v. B. of England*, 3 P. Wms. 402.

Trusts of Money.
(Full Form.)

Priority.

If the debts are to be paid according to their legal priority, say, Legal priority of debts.

"UPON TRUST that they the said (*trustees*) and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, and their and his assigns, do and shall by and out of the residue of the said monies and premises, pay off and satisfy all principal money and interest now due, or hereafter to become due on the several mortgages affecting the said premises, [and which are mentioned in the schedule hereunder written,] and the costs and charges of procuring reconveyances of the premises comprised in such mortgages respectively. AND, in the next place, do

To pay off mortgages.

And redeem annuities.

**DEBTOR
AND
CREDITOR.**

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(Full Form.)*

Satisfy judgments.

And bonds.

Simple contract debts.

until each of the said creditors, or his or her executors, administrators, partners, or assigns, shall

and shall repurchase and extinguish all annuities or rent-charges granted by the said (*debtor*) [*or debtors*] and chargeable upon the said premises, [and mentioned in the schedule hereunder written,] or such of them as the said trustees or trustee shall think fit, and pay all arrears thereof, and the costs and charges of assigning or entering satisfaction on the records of the several judgments for the securing such annuities, or any of them, and obtaining releases of the premises chargeable with the payment thereof; such mortgages or annuities, or rent-charges, to be respectively paid solely out of the money arising by sale, or by and out of the rents and profits of the estates whereon they are respectively charged, and not otherwise. AND then and in the next place, do and shall pay off and discharge the several sums of money secured by the judgments mentioned in the schedule hereunder written, and entered up against the said (*debtor*) [*or debtors*] with the interest due thereupon, and the costs and charges of assigning or having satisfaction acknowledged on the records thereof. AND from and after payment thereof, do and shall discharge all sums of money secured by the several bonds particularly mentioned and specified in the schedule hereunder written, to be due and owing to the several persons therein named, together with the interest now due or to become due thereon. AND then and in the next place shall and do pay off and discharge the several simple contract debts particularly specified in the schedule hereunder written, to be due to the several persons therein also named, together with the interest of such of them as carry interest. The said judgment, bond, and simple contract debts respectively to be paid off and discharged, (as to and in respect of each of such the said classes of debts or securities) at such time or times, and in such order, course, priority, and manner, as to them the said (*trustees*) or the survivors or survivor of them, or the heirs,

have received the full amount of the debts owing to him, her, or them respectively (1), by four equal instalments or payments of s. in the pound, (*or as the case may be*) upon the amount

DEBTOR
AND
CREDITOR.

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(Full Form.)

executors, or administrators of such survivor, or their or his assigns shall seem most convenient and proper. AND from and after full payment and satisfaction of the said several mortgages, judgments, bonds, and simple contract debts, and other monies and expenses aforesaid, then UPON TRUST that they the said trustees and trustee for the time being, shall and do pay the residue or surplus, if any, of the money arising from such sale or sales, mortgage or mortgages, or other disposition of the trust property aforesaid, unto the said (*debtor*) his executors and administrators, to and for his and their own use and benefit. PROVIDED always, that nothing herein contained shall be expounded, or deemed, or taken to give to the said several annuitants or mortgagees, or any of them, any further or greater security upon the said trust premises than they respectively now have under or by virtue of the several deeds or assurances whereby the same are expressed to be secured to them as aforesaid."

Surplus to
debtor.

Trusts not to
better incum-
brancers' se-
curities.

(1) If there be two or more debtors in copartnership, say, Copartners.

" And do and shall apply the residue or surplus, if any, of the produce of the separate estate of each of them the said (*debtors*) in aid of the partnership fund, for the payment of the partnership debts, until each of the partnership creditors who have executed or shall execute these presents, his or her executors or administrators shall have received [by the instalments hereinafter mentioned,] the full amount of the debt owing to him or her respectively, with interest as hereinafter expressed, and do and shall apply the clear residue of the partnership effects of the said (*debtors*) or a competent part thereof, in payment of the debts owing by them on their partnership account to such of their creditors respectively as have executed or shall execute these presents, or to their respective executors, administrators, or assigns." And see *post*, No. VIII.

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AND
CREDITOR.

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(Full Form.)*

of their several debts, in the manner following,
(that is to say) the first instalment or payment
of s. in the pound, within the space
of calendar months, from the day
of ; the second instalment or payment
of s. in the pound, within the space
of calendar months from the said day
of ; the third instalment or payment
of s. in the pound, within the space of
calendar months, from the said day of ;
and the fourth and last instalment or payment
of s. in the pound, within the space of
calendar months, from the said day of ,
together with interest for the said several instal-
ments or payments after the rate of £5 per cent.
per annum, from the said day of , up
to the time of payment of the same respectively.

And surplus to
debtor.

AND after full payment and satisfaction of all and
every the said debts, rents, and demands, and
costs, charges, and expenses as aforesaid, then IN
TRUST (1) that they the said trustees or trustee, for

Copartners.

(1) If there be two or more debtors in copartnership, say,

“ IN TRUST that they the said trustees or trustee do and
shall pay, assign, and assure the residue or surplus (if any)
of the share of each of them the said (*debtors*) of and in the
said clear produce of the said copartnership effects in or to-
wards the payment of such of his separate debts for which
provision is hereby made, as shall not have been discharged
out of the clear produce of his separate estate, in the manner
and pursuant to the direction hereinbefore contained, and
afterwards, and in the next place, pay, assign, transfer, and
assure to each of them the said (*debtors*) his executors, ad-
ministrators, or assigns, the clear residue or surplus, if any,
of his separate estate, or of the produce thereof, and also the

the time being, do and shall pay the residue or surplus of the money to be by them or him received by any of the means aforesaid, and convey and assure so much and such parts of his [*or their*] said real and other estates as shall not have been disposed of for the purposes aforesaid, unto the said (*debtor*) his [*or the said (debtors)*] and their respective] heirs, executors, administrators, and assigns, (according to the nature and qualities thereof respectively) to and for his and their own proper use and benefit. PROVIDED always, and it is hereby declared and agreed by and between the parties hereto that in the mean time and until the monies to be raised or arise by any of the means aforesaid can or shall, under the trusts hereof, be applied for the purposes hereinbefore directed, and shall amount to the sum of £ , the same shall be invested in the purchase or upon the security of Exchequer bills or other government funds of the United Kingdom, and the dividends,

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AND
CREDITOR.

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(Full Form.)

Money to be
invested till
distribution.

surplus, if any, of his share of the produce of the copartnership effects, but subject nevertheless to the provision hereinafter contained, that is to say, in case any one or more of them the said (*debtors*) is, or shall become a creditor or creditors of the other or others of them, either by having paid or by paying out of the produce of his effects or otherwise, debts or the share of debts payable by the other or others of them, then and in that case such of them the said (*debtors*) as shall be so a creditor or creditors of the other of them, his or their executors or administrators, shall be entitled to have and receive out of the surplus or residue which otherwise would have belonged to him or them who shall be so indebted, so much money as shall be owing to him or them who shall so become a creditor or creditors of the other of them." And see *post*, No. VIII.

If one copartner
is indebted to
the other.

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Full Form.)*

Debts not pay-
able may be
satisfied.

Power to dis-
charge extents,
&c.

interest, and proceeds thereof, from time to time, be applicable and applied to and for the same ends, intents, and purposes as are hereinbefore directed or expressed concerning the principal money, and rents, and profits to arise by any of the said means. PROVIDED also, and it is hereby declared and agreed by and between the several parties hereto, that in case there shall be any debts or sums of money outstanding against the said (*debtor*) [*or debtors*, or any or either of them], upon or in respect of any bill or bills of exchange, or other securities not yet become payable, it shall be lawful for the said trustee or trustees for the time being, if they shall think proper, to pay the same, or a dividend thereupon, (after abating discount or legal interest for the time which such bills or securities shall have to run), in the same or like manner as if the said debts or sums were proved or proveable under a commission of bankruptcy. PROVIDED also, that it shall be lawful for the said trustees or trustee for the time being, if he or they shall think proper, out of the first or any other monies which shall come to his or their hand or respective hands under or by virtue of the said several conveyances, assignments, or assurances aforesaid, or any or either of them, to satisfy and discharge any executions or extents which may have been awarded against the person or property of the said (*debtor*) [*or debtors*, or any or either of them], and also the sheriff's poundage and other costs and expenses relating thereto, whether regularly payable by the said (*debtor*) [*or debtors*] or by the person at whose

suit such executions or extents may have issued. AND also if they the said trustees or trustee shall think proper, but not otherwise, to pay the several creditors of the said (*debtor*) [*or debtors*] or any or either of them, whose debts respectively do or shall not exceed, or who shall agree to accept in lieu thereof the sum of £20, the full amount of their respective debts, or the said sum in lieu of the same respectively (1). AND also to pay any of the creditors of the said (*debtor*) [*or debtors*, either separately or jointly,] or any trustee or trustees for them, who by reason of infancy or other restriction or disability cannot legally or without a breach of trust execute or accede to

DEBTOR
AND
CREDITOR.

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(Full Form.)

Power to pay
debts in full
not exceeding
£20.

May pay debts
of infants, &c.
in full.

(1) If there be two or more debtors in copartnership, say, Copartners.

“Nevertheless under the restriction that the produce of the partnership effects, so far as the same will extend, shall be applied in payment of such only of the said debts as are owing on account of the said co-partnership, and that the produce of the separate estate of each of them the said (*debtors*) so far as the same will extend, shall be applied in payment of such only of the same debts as are owing by him on his separate account.”

If the debtors carry on the business of bankers, the following proviso may be added here, Bankers.

“PROVIDED always, that it shall be lawful for the said trustees or trustee, at their or his discretion, to receive notes heretofore issued by the said (*debtors*) in copartnership as aforesaid, called Bank notes, or bills drawn, indorsed, or accepted by the said (*debtors*) which are due and unpaid, or shall not have been paid when due, in payment or part payment of any debt now owing to them the said (*debtors*) upon their copartnership account.”

[illegible]

State to be
proved on oath
if required.

Discretionary power to admit debts, &c.

these presents, the full amount of the debts owing to such creditors respectively. And also to set apart and retain in their or his hands the amount of any debt or debts owing to any of the creditors of the said *debtor*, [or debtors, or either of them] who are or shall be resident abroad, and shall not have executed or otherwise acceded to these presents, before a final dividend shall have been made of the produce of the said trust estates; and also to pay to such creditors respectively, the whole or any part of the money so set apart accordingly, as to them the said trustees or trustee shall seem expedient, for the purpose of finally closing the trust accounts; and the balance or surplus (if any) of the money so to be set apart after satisfying the said last mentioned debts shall belong to, and be considered a part of the general residue of the said trust estate, except as hereinafter is provided. And it is hereby declared and agreed that all debts owing or alleged to be owing by the said (*debtor*) [or debtors, as well on their partnership as on their private and separate accounts] to them the said several creditors, parties hereto, shall, if required by the said trustees or trustee, be verified by the affidavits, or affirmation, if quakers, of the said creditors respectively, as well with respect to the consideration as the amount of the same, to be sworn before a master in Chancery, or a magistrate of the county or place in which such creditors shall respectively reside. PROVIDED always nevertheless, that it shall be lawful for the said trustees or trustee to admit any person or persons

to be a creditor or creditors for any debt or debts claimed by him, her, or them, to be due from the said (*debtor*) [*or debtors*, either separately, or as such partners as aforesaid, or any or either of them,] on such evidence as they or he the said trustees or trustee shall think sufficient. AND also lawful for them or him to settle and ascertain the amount of the debt or debts claimed by any creditor or creditors, [and also the fund or property on which the party or parties is or ought to be deemed a creditor or creditors (1),] and also to convey any part of the said trust estates as a security for or in satisfaction of any debt or debts in such manner as to the said trustees or trustee shall seem expedient. PROVIDED always, that notwithstanding any thing herein contained, the security or securities of any creditor or creditors who shall execute these presents, shall not thereby be prejudiced or affected in any manner howsoever; but the same shall be and remain as valid and effectual in all respects whatsoever, as if these presents had not been made. AND also that the trustees or trustee for the time being, shall or may, at their or his discretion, compound

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AND
CREDITOR.

Trusts of Money.
(Full Form.)

Creditors having securities not to be prejudiced by executing these presents.

Trustees may compound with creditors, and sign certificates, &c.

(1) If there be two or more debtors in copartnership, say, Copartners.

“ And also to separate, distinguish, and allot the separate property from the partnership property, according to the best of his or their judgment and discretion, and to settle, ascertain, and adjust the state of accounts as between the said partners, for the purpose of dividing the final surplus between them, or their respective representatives.”

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Trusts of Money.
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May make ar-
rangements with
mortgagees, &c.

any debt or debts owing to the said (*debtor*) [*or debtors*, or any or either of them (1),] and accept a part thereof, or a security for the same, in full, or give further time for the payment of the same debt or debts, and shall have a discretionary power in refraining to sue for any debts which shall in their or his opinion be bad or desperate, without being answerable for the amount of all or any part thereof, and shall or may sign the certificate or certificates of any person or persons indebted to the said (*debtor*) [*or debtors*, or either of them,] who is [*or are*,] or shall or may become bankrupt or bankrupts. AND that the trustees or trustee for the time being, shall or may make any agreement or arrangement, which they or he shall deem reasonable, with any creditor or creditors possessing any security or securities given to or by the said (*debtor*) [*or debtors*, or any or either of them severally,] out of or upon any lands or other property of, or holden by him the said (*debtor*) [*or them the said debtors*, or any or either of them,] by way of mortgage, or for otherwise securing the payment of any money or

Authority to
compound
debts.

(1) As the debtor is entitled to the surplus of the trust monies, if any, after payment of debts, and this would be diminished by the trustees compounding for debts of which payment in full might possibly have been enforced, it is necessary for their indemnity, that they should have an authority to compound, &c. expressly given to them, as they would otherwise (unless it were evidently for the benefit of the trust estate, *Glen v. Marshall*, 3 P. Wms. 381) be answerable for loss.

monies to such creditor or creditors; with a view and in order to procure such lands or property to be exonerated or released, of and from the lien or charge created thereon by such (*debtor*) [*or debtors*, or any or either of them,] so nevertheless that the said trustees or trustee shall not pay or give any consideration or price, for or upon such arrangement or agreement being made, beyond the amount or value of the principal monies and interest then due to the person or persons possessing such securities, and the incidental expenses attending such arrangement and release. AND also that the said trustees or trustee shall or may sell all or any part of the trust property for money to be paid on a future day, or on credit, or for security or securities by way of bills of exchange or otherwise, as the said trustees or trustee shall think expedient (1). AND that the said trustees or trustee shall also be at liberty, and have full authority to buy in the said trust property, or any part thereof, which shall be offered for sale at public auction, and to resell the same at the same or any future auction, or by private contract, without being liable to answer for any loss or

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Full Form.)*

Trustees may
give time for
payment of
purchase
money.

May buy in
estates at auc-
tion.

(1) If the declaration of trust have reference to an assignment of debts as well as a conveyance of real property, add, Personalty.

“AND shall or may sell and convert into money all contingent interests and securities which cannot be immediately enforced with a prospect of advantage, and all debts which shall be deemed bad or doubtful, or which cannot be collected in a reasonable time, so as to enable them or him the said trustees or trustee, finally to close the trust accounts at an early period.”

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Full Form.)*

May arrange
with creditors
entitled to a
transfer of
stock.

Doubts re-
specting the
amount of debts
may be re-
ferred to arbi-
tration.

diminution in the price or produce which may happen by such sale. AND that they the said trustees or trustee shall have full power and authority to settle with any creditors entitled to have funded property in Bank, India, or other stock or annuities replaced or transferred to them, upon such terms and conditions as to them or him the said trustees or trustee shall appear advisable for bringing the debts of the said creditors to a fixed balance in money. AND it is hereby further declared and agreed by and between the parties to these presents, that in case any doubts or difficulty shall arise in ascertaining the amount of any sum or sums of money due or payable to any creditor or creditors of the said (*debtor*) [*or debtors*, either on their partnership or separate accounts,] then and in that case the full and exclusive power of ascertaining the amount of the same debt or debts respectively, shall be referred to and vested in such person or persons as the said trustees or trustee for the time being, on the one part, and the said creditor or creditors on the other part, shall appoint for that purpose, and which said person or persons, it is hereby agreed shall be appointed by the said parties respectively within the space of three days next after requisition in writing shall be made to the other or others of them for that purpose, and the usual or other proper bonds of submission be executed by them respectively, and the award or determination of the person or persons so appointed, shall be final and conclusive on all persons entitled to any interest or benefit under these presents. AND also

that all differences which shall arise respecting the amount of any debt or debts owing by any creditor or creditors to the said (*debtor*) [*or debtors*, or any or either of them jointly or severally,] or relative to or concerning any property claimed as his [*or their*, or any or either of their,] own proper effects, or as belonging specifically to any of his [*or their*] creditors, shall or may be settled in the same or like manner, if they or he the said trustees or trustee shall think fit. AND it is hereby further provided, declared, and agreed by and between the parties to these presents, that the trustees or trustee for the time being shall or may, if they or he shall think fit, hire or take any house, counting-house, office, or other place for carrying on or managing the affairs of the said (*debtor*) [*or debtors*] or the concerns of the said trust, at the expense of the trust estate, and also employ the said (*debtor*) [*or any or either of them the said debtors*] with his [*or their*] consent, or any other person or persons to assist in the management, sale, and disposition of all or any of the estates, property, and effects which is or are hereby, or which shall or may at any time hereafter be vested in the said (*trustees*) by virtue of the several conveyances, assignments, and assurances mentioned to bear even date with these presents as hereinbefore is mentioned, or in collecting the same or the produce thereof; and also in making up and settling the accounts of the said (*debtor*) [*or debtors*, or any or either of them,] and getting in the debts due and owing to him, [*or them*, or any or either

DEBTOR
AND
CREDITOR.

Trusts of Money.
(Full Form.)

Trustees may
hire counting
house, clerks,
&c.

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Full Form.)*

May commence
or defend
actions, &c.

of them, on his or their joint and separate accounts,] and also to make and pay to the person or persons so employed, such allowances, salaries, or other remuneration, and to give to him or them such discretionary powers and authorities as the said trustees or trustee in their or his discretion shall think fit, without being answerable or accountable for the conduct of the person or persons so employed, or for any loss which shall or may arise or happen to the said trust estate by reason of any such powers or authorities, or of any misconduct in them, or any of them. AND also that in case it shall be deemed expedient by them or him the said trustees or trustee, to commence or defend any action or actions, or suit or suits at law or in equity, relative to or concerning the said trust estate, they the said trustees or trustee may exercise their or his discretion in respect thereof, and their and his decision shall be conclusive upon the several parties hereto, and they and he shall at all times be indemnified from and against all costs, charges, damages, and expenses which shall be occasioned in or by commencing or defending any such actions or suits, or in relation thereto (1).

Household
goods, &c.

(1) If there be an assignment of household goods, &c. as well as of the real estates of the debt, or add (*if so agreed*),

“AND moreover, that it shall be lawful for the said trustees or trustee, at their or his discretion, to permit the said (*debtor*) [*or each or any or either of them the said debtors*] to have and use for a time to be limited, or to give

AND each and every of them the said (*trustees*) separately and apart from the others and other of them, for himself, and his own respective heirs, executors, and administrators, and for his and their own proper acts, deeds, and defaults, only and respectively, doth hereby covenant, promise, and declare to and the said and (1) (*any two of the persons who are parties, of the third part*) respectively and individually, and also in trust for the several other persons parties hereto of the third part, and their respective executors, administrators, and assigns, that they the said (*trustees*) and

DEBTOR
AND
CREDITOR.

Trusts of Money.
(Full Form.)

Covenant by
trustees duly
to apply the
trust monies.

and deliver to him [*or to them, or any or either of them*] the absolute property of all or any part of the household goods, furniture, linen, or other wearing apparel of him the said (*debtor*) [*or of each, or any, or either of them the said debtors*] to or for his [*or their, or any or either of their*] own proper use and disposal, any thing hereinbefore, or in the said several conveyances, assignments, or assurances of even date herewith, or any or either of them, contained or implied to the contrary thereof in any wise notwithstanding."

(1) As the trustees cannot covenant with themselves, and as it would be necessary, were they to covenant with the other creditors in general, that all such creditors should be parties in any action which might be brought against the trustees, it is usual to make them covenant with one or two only of the creditors in whom no part of the trust estate is vested. And in framing this covenant care should be taken, on the part of the trustees, that it be several, and not joint; for should they bind themselves for the acts of each other, the court will not relieve them, especially in the case of a composition of debts; Leigh v. Barry, 3 Atk. 583; it should therefore be worded as above, or it may be more briefly expressed thus,

Covenant of
trustees to
apply the
monies.

Covenant by
trustees to be
several.

"And each of them the said (*trustees*) for himself, his heirs, executors, and administrators, doth hereby covenant, &c. with and to the said (*debtor*)," &c. as in the text.

**DEBTOR
AND
CREDITOR.**

*Trusts of Money.
(Full Form.)*

Money in hand
to be deposited
at a banker's.

And accounts
to be stated
every six
months.

each of them, and their respective executors and administrators, (each covenanting separately for himself, and his own representatives only as aforesaid,) shall and will from time to time, or as often as any monies shall be received by them, or any or either of them, by virtue or in pursuance of these presents, or of the several conveyances, assignments, and assurances respectively bearing even date with these presents, or any or either of them, distribute, apply, and dispose of the same upon and conformably to the several trusts, and in the manner hereinbefore declared or expressed concerning the same, and the true intent and meaning of these presents. AND in the mean time, and until such distribution or disposition shall have been made thereof, shall and will pay and deposit the same, and all bills and other securities for money belonging to the said trust estate, in the names or name of them the said trustees or trustee for the time being, unto or with Messrs. and Co. bankers in , or unto or with such other banker or bankers as they the said trustees or trustee shall think proper. AND also that they or he the said trustees or trustee shall and will, at the end of every six calendar months next hereafter, or oftener if thereunto required by any three of the persons parties hereto of the third part, whose debts together or separately shall amount to £100 or more, make out a full and particular account or statement in writing of the amount of the said trust estate, which shall then have been gotten in, or converted into money, and of the application thereof, for the inspection

of the parties hereto of the third part, and produce the same to them, or such of them as shall be present at a meeting to be called for that purpose, by the said trustees or trustee, or such creditors or creditor as aforesaid, at some public coffee-house or tavern in _____, after fourteen days notice thereof, in the London Gazette; and shall and will attend every such meeting, (unless prevented by sickness or other reasonable cause,) and give such explanations to the creditors then present, as shall be requisite for the elucidation of the same accounts, and of the general state of the concerns of the said (*debtor*) [*or debtors*, and of each and every of them.] AND in and concerning all other matters and things relating to the trusts, intents, and purposes hereinbefore contained, expressed, or referred unto, shall and will act in the execution of the trusts hereby reposed in him and them, to the best of his and their discretion and judgment, for the benefit of the several persons interested therein, without preference or partiality, and according to the true intent and meaning of these presents, and of the parties hereto. PROVIDED ALWAYS, and it is hereby further declared and agreed, by and between the said parties hereto, that when all the trusts hereby reposed in the trustees of these presents, shall be performed and satisfied as far as in the opinion of the trustees or trustee for the time being is practicable, they the said trustees or trustee shall call a meeting of the creditors of the said (*debtor*) [*or debtors*] by fourteen days notice in the London Gazette, specifying the occasion

DEBTOR
AND
CREDITOR.

Trusts of Money.
(Full Form.)

Trustees will
act faithfully.

Cessation of
trusts.

DEBTOR
AND
CREDITOR.

Trusts of Money.
(Full Form.)

Covenant by
debtor that he
has made a full
discovery.

or purport of such meeting, and shall produce the final accounts of and respecting the said trust estate, and the major part in value of the creditors then present, (not being the said trustees or trustee) shall have and are hereby invested with full power and authority, by their resolution to that effect, to allow the said accounts; and upon due payment by way of dividend, or otherwise, of the money then in the hands of the said trustees or trustee and applicable to the said trusts, to declare them and him respectively, or either of them, to be fully acquitted and released from the trusts hereby or otherwise in them or him reposed, and such resolution or resolutions of the said creditors, shall be conclusive and binding upon all and every the parties hereto, who shall be in any wise interested therein, and the same trust accounts shall be fully closed, and a final dividend shall be forthwith declared and made of the said money accordingly. AND the said (*debtor*) [*or each of them the said debtors severally and apart from the others and other of them,*] for himself, his heirs, executors, and administrators, [*and as to and concerning the acts, deeds, and defaults of himself, his heirs, executors, and administrators only,*] doth hereby covenant and declare to and with them and each of them the said (*trustees*) their and his heirs, executors, administrators, and assigns, in the manner following (that is to say) that he the said (*debtor*) has [*or they the said debtors respectively have*] at or before the time of the execution of these presents, made a true and faithful discovery to them the said (*trustees*) or to some or one of

them, of all and singular the estate, property, and effects, whether real, personal, or mixed, belonging to him, [*or to them on their partnership and their respective private account*] to the best of his [*or their respective*] knowledge and belief; And that he the said (*debtor*) hath not [*or they the said debtors have not*] withheld, embezzled, or concealed, nor shall or will withhold, embezzle, or conceal any part of his [*or their*] estate, property, or effects, from them the said (*trustees*) or other the trustees or trustee for the time being, or any or either of them; and also that the books of accounts delivered by him the said (*debtor*) [*or them the said debtors*] to the said (*trustees*) or their solicitor, at or before the time of the execution of these presents, do contain just and true accounts and statements of all and every the [*partnership and private*] estate, effects, and debts of him the said (*debtor*) [*or them the said debtors respectively,*] to the best of his [*or their*] knowledge and belief, and as far as it is in his [*or their*] power to make out or ascertain the same; And moreover that he the said (*debtor*) [*or they the said debtors, and every or either of them,*] will, at any time or times hereafter, at the request of the said trustees or trustee for the time being, or of either of them, or of any three of the persons parties hereto of the third part, whose debts respectively shall amount to £100 or more, make oath to the truth of the said discovery, statement, and accounts, so by him [*or them*] made and delivered as aforesaid, or of any or either of them. AND further, that he the said

DEBTOR
AND
CREDITOR.

Trusts of Money.
(Full Form.)

Will make oath
thereof if re-
quired.

DEBTOR
AND
CREDITOR.

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(Full Form.)*

And will assist the trustees in the execution of the trusts.

FURTHER
WITNESS,
letter of licence
to debtor.

Debtor to
appear at in-
surance office.

Debtor will not
prejudice the
policy.

(*debtor*) [*or they the said debtors respectively*] shall and will from time to time, and at all times hereafter, when thereunto required by the said trustees or trustee for the time being, aid and assist them and him, in conducting and managing the concerns of the said trust estate, or in the sale or other disposition of his [*or their*] estates [property and effects,] to the best of his [*or their*] power and judgment, and also shall and will from time to time make and give all such explanations and discoveries in relation to his [*or their*] said affairs, as the said trustees or trustee shall require, or as may be necessary or proper to enable them or him to ascertain the true and exact state thereof (1). AND THIS INDENTURE

(1) If it be intended to insure the life of the debtor or debtors, add here a covenant for his or their appearing at an insurance office for that purpose, as,

“AND, moreover, that he the said (*debtor*) [*or they or either of them the said debtors*] shall and will at any time or times hereafter, at the request of the said trustees or trustee for the time being, or of the said creditors parties hereto, or either of them, their or his executors, administrators, or assigns, (upon reasonable notice being given to him thereof) personally appear at any office or place of assurance within the cities of London or Westminster, and send to such office or place information in writing of his place [*or their respective places*] of abode, together with satisfactory certificates of his [*or their*] being alive, and of the state of his [*or their respective*] health, in order that they, or any or either of them the said trustees or creditors respectively, may insure any sum of money upon the life of him the said (*debtor*) [*or of each or either of them the said debtors.*] AND that he the said (*debtor*) [*or they the said debtors respectively*] whose life [*or lives*] shall be so insured, shall not,

ALSO WITNESSETH (1), that in consideration of the several covenants hereinbefore contained, by and on the part of the said (*debtor*) [*or debtors* respectively] and also of the conveyances, surrenders, and assignments made and executed by him [*or them*] as hereinbefore is mentioned, they the said several persons parties to these presents of the second and third parts, HAVE, and each and every of them HATH given and granted, and by these presents Do jointly, and each and every of them DOTH severally give and grant unto the said (*debtor*) [*or each of them the said debtors*] from henceforth, and at all times hereafter until the trustees or trustee for the time being of the said trust estate, by any writing under his or their hand or respective hands, and indorsed on these presents, shall declare the benefit of this present

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nor will do or cause to be done, any act or thing whatsoever, whereby any policy which may be taken out for effecting any such insurance, shall or may become void or voidable. AND further, that in case the said (*debtor*) [*or either of them the said debtors*] shall at any time during the subsistence of any of the trusts of these presents (save the ultimate trust thereof,) leave the United Kingdom of Great Britain and Ireland, so as to occasion any extra premium or expense to the said trustees or trustee for effecting or continuing any such assurance, the same shall be repaid unto him or them by or out of the said trust estate."

(1) This letter of licence, &c. to the debtor is usually contained in the deed of declaration of trust; but it being for his own exclusive benefit, it seems more proper that it should be given by a separate instrument, that it may remain in his custody for production if requisite; and see 2 WILDE'S SUPPLEMENT, No. CXVII.

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Full Form.)*

If the debtor
be sued, the
debt to be lost.

proviso to be forfeited, or otherwise determined by the non-conformity or misconduct of him the said (*debtor*) [*or them the said debtors*] or other sufficient and lawful reason and cause, full, free, and absolute liberty and licence to follow and attend to any affairs, business, matters, or things whatsoever, in any part or parts, or place or places, of or in those parts of the United Kingdom of Great Britain and Ireland called England, Wales, and Scotland, or either of them respectively, but not elsewhere, without any arrest, attachment, execution, impediment, or molestation whatsoever, to be made or attempted of, to, or against him the said (*debtor*) or any of his [*or them the said debtors, any or either of them, or their or any or either of their*] goods, merchandize, estate, property, or effects, by them the said several persons parties to these presents of the second or third parts, or any or either of them, their, or any or either of their executors, administrators, partners, or assigns, or by their or any or either of their means, procurement, or consent, (other than and except by them the said parties hereto of the second part, in pursuance only and execution of the trusts of these presents) for or on account of any debt or debts which by him the said (*debtor*) [*or them the said debtors, or any or either of them,*] is, or are, or hereafter during the subsistence of the trusts and licence in these presents contained, shall or may be due and owing to them, or any or either of them the said parties. AND each and every of them the said several persons parties to these presents of the second and third parts re-

spectively, doth hereby for himself, and herself, and his and her heirs, executors, administrators, partners, and assigns, covenant, declare, and agree with and to the said (*debtor*) [*or each of them the said debtors*] his [*or their respective*] executors, administrators, and assigns, that if they or either of them the said parties hereto of the second and third parts, or the executors, or administrators, or partners, or assigns, of any or either of them, shall or do arrest, attach, or otherwise take in execution, impede, or molest the person [*or persons*] goods, merchandize, property, or effects of the said (*debtor*) [*or debtors, or of any or either of them,*] (other than the said persons parties hereto of the second part in the execution of the trusts aforesaid), contrary to the licence hereinbefore given, or the true intent and meaning of these presents, then and in such case the said (*debtor*) [*or debtors respectively,*] (1) his [*or their respective*] heirs, executors, and administrators, shall thenceforth be absolutely and for ever acquitted, exonerated, and discharged of and from all and every the debt or debts so due or owing to the person or persons acting contrary to the covenant and agreement lastly aforesaid, and of and from all securities for the same, and

DEBTOR
AND
CREDITOR.

Trusts of Money.
(Full Form.)

(1) If there be two or more debtors in co-partnership, say, Copartners.
“Then and in such case they the said (*debtors*) or such of them whose person or persons, estate or effects, shall be so molested as aforesaid, their or his heirs, executors, or administrators, shall thenceforth,” &c. *as above*.

**DEBTOR
AND
CREDITOR.**

*Trusts of Money.
(Full Form.)*

If default made
creditors may
sue.

all actions, suits, claims, and demands whatsoever, both at law and in equity, for or in respect thereof; and then and in such case the licence hereinbefore granted to him the said (*debtor*) [*or* them the said *debtors*] shall be and operate as an absolute and final release of every such debt or debts respectively, and shall and may be pleaded in bar thereto, and to any and every suit, action, attachment, arrest, or other process or proceeding whatsoever, which shall have been so had, issued, or taken against him the said (*debtor*) [*or* them the said *debtors*] his [*or* their] executors, administrators, or assigns, or any or either of them, or any of his or their goods, chattels, or effects, for or in respect of the same (1). Pro-

(1) If there be two or more debtors in co-partnership, add,

Copartners not
to be preju-
diced by the
non-conformity
of each other.

“AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the premises, and in further pursuance of the aforesaid agreement on the part of the creditors of the said (*debtors*) each and every of them the creditors parties hereto of the third part, for himself and herself respectively, and his and her respective executors, administrators, and partners, doth hereby covenant, declare, and agree, to and with each of them the said (*debtors*) severally, distinctly, and apart from the other or others of them, and to and with the executors and administrators of each of them respectively, that in case the trustees or trustee for the time being, under or by virtue of these presents, shall at any time or times hereafter, by any writing under their or his hand or respective hands to be indorsed on these presents, certify that any one, two, or more of them the said (*debtors*) have or hath made a full and true discovery of his or their effects to the satisfaction of the said trustees or trustee, then and in that case the said creditors parties hereto of the third

VIDED ALWAYS nevertheless, that if it shall appear that the said (*debtor*) hath [or they the said

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AND
CREDITOR.

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part, or any or either of them, their or any or either of their executors, administrators, or partners, shall not nor will, for or in respect of any debt or debts now owing to them respectively, arrest, attach, or take in execution the person, goods, or estate of any or either of them the said (*debtors*) in whose favour such last mentioned certificate shall be signed, nor in any wise molest, sue, or proceed against him or them in or for any other manner or purpose than for the sake and purpose of conforming to the rules of law in that behalf; And also that in case the person or persons in whose favour such certificate or certificates shall be signed, shall appear in any action, suit, or proceeding, in which he or they shall be so named for conformity, or shall suffer the plaintiff or plaintiffs in such action or proceeding to enter an appearance, or file common bail for him or them, as the case may require, (which he and they is and are hereby authorized to do,) such plaintiff or plaintiffs shall and will reimburse or pay to him or them the full amount of all costs, charges, and expenses which he or they shall have incurred or sustained by reason or on account of any such action or proceeding. AND further, that in case any or either of the said creditors, his, her, or their executors, administrators, or partners, shall sue or proceed against any or either of them the said (*debtors*) in whose favour such certificate or certificates shall be signed, or his or their goods or estate (other than and except for conformity only), for or in respect of any of the debts mentioned in the schedule to these presents, contrary to the true intent and meaning hereof, then and in that case, each of them against whom or whose goods or estate any such proceedings shall be had, shall be released, acquitted, and discharged, and he and they is and are hereby released, acquitted, and discharged, of and from his and their said debt or debts; save only nevertheless, that nothing hereinbefore contained shall extend or be construed to extend, to acquit, or release the

Copartners
made parties to
suit for conformity to be
indemnified.

Debts of conforming partners to be void if sued.

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AND
CREDITOR.

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Creditors not
acceding within
a given time, to
be excluded.

debtors or any or either of them, have] wilfully concealed, or hereafter shall wilfully conceal any part of his [*or* their partnership or private] estate, property, or effects, to the value of £ , or if he [*or* they or any or either of them,] shall be guilty of any wilful breach or default in performance of all or any of his [*or* their] covenants or agreements hereinbefore contained, then and in either of the said cases it shall be lawful for the several creditors who have executed, or who shall hereafter execute these presents, or any or either of them, to sue for, recover, and receive the whole of their respective debts, or such part or parts thereof as shall remain due and unpaid at the time of any such concealment, breach, or default, as aforesaid, in the same or like manner as they respectively might have sued for, recovered and received the same, in case these presents had not been made, any thing hereinbefore contained to the contrary thereof in any wise notwithstanding (1). PROVIDED FURTHER, and it is hereby declared and agreed, by and between the parties to these presents, that in case any creditor or creditors of the said (*debtor*) [*or debtors*, or any or either of them,] or the executors or ad-

said (*debtors*) or any or either of them, of or from any duty, obligation, covenant, or agreement, which they or any or either of them, shall or may be liable to observe or perform under or by virtue of these presents."

(1) See *ante*, pp. 365, n. (1), 394, n. (1).

ministrators of any creditor or creditors, (except creditors labouring under any of the disabilities hereinbefore mentioned, or except such creditors as the said trustees or trustee for the time being shall pay, or settle, or compound with, pursuant to the powers hereinbefore contained) shall, for the space of six calendar months next after notice for that purpose shall have been given to him or them by the said trustees or trustee, refuse, decline, or neglect to execute these presents, or otherwise legally accede to the same, then and in that case the said creditor or creditors so refusing, declining, or neglecting, his, her, or their executors or administrators, shall be excluded (1) from all benefit of or under the trusts thereof, and the said (*debtor*) [*or they the said debtors respectively, or such of them as shall be a debtor or debtors of such creditor or creditors*] his, her, or their heirs, executors, or administrators, shall be entitled to stand in the place of the same creditor or creditors respectively, his, her, or their executors or administrators, and have the same or the like benefit under the said trusts, as such creditor or creditors respectively, his, her, or their executors or administrators, would have been entitled to in case he or they had executed or acceded to these presents; save only and except that the provision lastly hereinbefore contained shall not extend, or be construed to extend to any creditor or creditors who shall be resident abroad, and the

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AND
CREDITOR.

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(Full Form.)

(1) See *ante*, p. 394, n. (2).

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AND
CREDITOR.**

*Trusts of Money.
(Full Form.)*

No creditor to
be admitted
unless notice
be given of his
claims before
final dividend.

Nor then, but
upon condition
of not disturb-
ing prior divi-
dends.

Debts omitted
in the schedule
may neverthe-
less be dis-
charged.

amount of whose debt or debts shall be retained or appropriated in the manner hereinbefore directed or authorised, until after twelve calendar months notice shall have been given to him or them by the said trustees or trustee. PROVIDED also, that no person or persons shall be entitled to be admitted a creditor or creditors under these presents, unless notice shall have been given by him or them of his or their debt or debts to the said trustees or trustee, before a final dividend shall have been made of the property of the said (*debtor*) [*or debtors,*] under the trusts hereinbefore declared; Nor shall any person or persons be admitted a creditor or creditors after any one or more dividend or dividends shall have been made under the said trusts, but upon the terms and condition of his or their not requiring any abatement of, or otherwise disturbing the dividend or dividends which shall have been made of the said trust property, prior to the time of his or their having given notice of his or their debt or debts, (1). PROVIDED also, and it is hereby further agreed and declared, that if it should happen that any debt or debts intended to be satisfied under or by virtue of these presents, be, at the time of the execution hereof, omitted to be inserted in the

(1) If there be two or more debtors in copartnership, add here,

Copartners' ac-
counts as be-
tween them-
selves not to be
affected.

“ PROVIDED ALWAYS, that notwithstanding all or any or either of the provisions hereinbefore contained, the said (*debtors*) as to the balance of the accounts subsisting or to arise between themselves as co-partners, or on account of their co-partnership, either by any payment already made

schedule hereunder written, it shall nevertheless be lawful for the said trustees or trustee for the time being, in case they or he shall think

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AND
CREDITOR.

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or hereafter to be made by any or either of them, or out of his or their effects, beyond his or their proportional part or parts, shall be in the same situation in all respects, and have the same or the like discharges, and the same or like remedies (or as nearly as may be) as he or they respectively would have had as to and against each other, or against any one or more of them, his, or their heirs, executors, or administrators, in case they had all become bankrupt, and had been declared bankrupts under a joint commission of bankruptcy issued against them, and each of them had severally obtained a certificate under the same commission, and the effects vested in the trustees of these presents by the said several conveyances, assignments, and assurances, respectively, of even date with these presents, had been sold under such commission of bankruptcy, and the produce thereof paid, applied, or divided under the said commission, and so and in such manner that on the one hand, no one or more of them the said (*debtors*) his or their heirs, executors, or administrators, may remain liable to the other or others of them, his, or their heirs, executors, or administrators, for any debt or duty which would have been discharged and released by any such bankruptcy and certificate, and so that on the other hand, no one or more of them, his or their heirs, executors, or administrators, may be discharged from any debt or duty to which he or they would have been liable in case of such bankruptcy and certificate. PROVIDED ALSO, and it is hereby declared and agreed by and between all and every the parties to these presents, and particularly the said (*trustees*) do hereby for themselves severally declare and agree, that in case the co-partnership effects of the said (*debtors*) shall be sufficient to pay and satisfy all and every the co-partnership debts by the instalments hereinbefore mentioned, or in case such co-partnership effects shall prove insufficient to pay and satisfy such debts, and the said (*debtors*) respectively shall, within the space of fourteen

If joint effects
sufficient to
pay joint debts,
separate estate
not to be sold.

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fit, (but not otherwise) with the consent and approbation of the said (*debtor*) [*or debtors*] testified in writing under his hand [*or their respective hands*] to pay off and discharge the same, or any

days next after notice in writing given to them for that purpose by the said trustees or trustee, raise and make good such deficiency, then and in either of the said cases, the separate effects of the said (*debtors*) respectively shall not be sold, applied, or disposed of towards satisfaction of the joint or separate debts of the said co-partners, unless at the special instance and request of the said (*debtors*) or either of them, or of their separate creditors, as to and in discharge of the debt or debts owing to such separate creditors respectively, it being the true intent and meaning of these presents and of the parties hereto, that the trusts hereinbefore declared of and concerning the separate effects of the said (*debtors*) respectively, shall not be carried into execution, except in the event of the said co-partnership effects proving insufficient for the purposes aforesaid, and the said (*debtors*) respectively not making good such deficiency within the time hereinbefore mentioned for that purpose, unless their respective creditors shall require the same trusts to be so carried into execution in respect of such separate effects. PROVIDED ALWAYS, and it is hereby further agreed and declared by and between the parties hereto, that notwithstanding the proviso and agreement lastly hereinbefore contained, it shall and may be lawful for the trustees or trustee of the said estates and effects for the time being, and they and he are hereby required, at the request of the said (*debtors*) respectively, by sale or mortgage of their respective separate estate or effects, to raise and levy such debt or debts, or sum or sums of money, as shall be due and owing from any or either of them to the partnership estate, upon his or their respective account or accounts, and to apply such sum or sums of money so to be raised and levied as lastly aforesaid, in or towards the making good and satisfying the several payments hereinbefore directed to be made out of the said copartnership estate and effects."

Unless at the
debtor's re-
quest.

of them, by and out of the said trust property, in like manner as if the same had been so inserted. PROVIDED ALWAYS, and it is hereby declared and agreed by and between the parties to these presents, that in case any question or difficulty shall arise or be propounded as to the management or conducting of the affairs of the said (*debtor*) [*or debtors*, or any or either of them] which is not expressly or clearly and distinctly provided for by these presents, or in either of the said deeds, conveyances, assignments, and assurances, bearing even date herewith; or in case the trustees or trustee for the time being under these presents, shall not be able to determine or agree upon the proper or best mode of managing or conducting the same, then and in every such case it shall be lawful for the said trustees or trustee, to call a meeting of the creditors of the said (*debtor*) [*or debtors*] by fourteen days notice in the London Gazette, and to submit such question or difficulty to the creditors who shall be present at such meeting; and that the resolution or determination of the major part in number and value of such creditors relative thereto shall be conclusive and binding upon all persons entitled to any benefit under the trusts of these presents, and the same shall thenceforth be managed and conducted accordingly (1). PROVIDED ALSO, and it is hereby

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Trustees in
cases of doubt,
may convene a
meeting of cre-
ditors for their
direction.

(1) Or it may be agreed that such doubts may be determined by the opinion of counsel, in which case, say,

“ PROVIDED ALWAYS, and it is hereby agreed and declared, that if any question shall arise on the true construction of these presents, or any clause or provision herein

Doubts to be
determined by
counsel.

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Acts of the
major part of
the trustees to
be valid.

further agreed and declared by and between the said parties hereto, that all acts, deeds, matters, and things which shall or may be done, or resolved and determined upon, or assented to, by the major part of the trustees for the time being (1) of these presents, in pursuance of any of the trusts or directions hereinbefore contained, (save only as to the execution of conveyances and the application of the said trust property) shall be

contained respecting the trusts thereof, the same question shall be submitted by the trustees or trustee for the time being, to two counsel in the law (each being of the degree of a barrister) for their opinion and advice relative to the matter so in question, and in case such two counsel shall not agree as to the line of conduct to be pursued by the said trustees or trustee, then the same shall be submitted to a third counsel, to be named by such two counsel, and the opinion and advice of such two counsel, or (in case of their difference in opinion) of such third counsel, shall be binding and conclusive upon the said trustees or trustee, and fully exonerate and indemnify them and him from all responsibility on account of the event or consequences of their or his acting under or in pursuance of such opinion and advice, if they or he shall think proper to act under or in pursuance of the same. PROVIDED nevertheless, that the said trustees or trustee shall not be bound to act in pursuance of the opinion or advice which may be so given, but may, if they or he shall think fit, call a meeting of the creditors of the said (*debtor*) [*or debtors*] by fourteen days notice in the London Gazette, and act by the direction of the major part in number and value of the creditors who shall be present at the meeting to be convened for that purpose."

Major part of
trustees.

(1) As all trustees are equally guardians of, and have a like power over the trust estate, no act will be valid without their joint concurrence, unless it be otherwise declared; a proviso of this kind therefore tends to facilitate the execution of the trusts.

equally valid, conclusive, and binding upon and against, as well the others or other of the said trustees, as also upon and against all and every the parties hereto of the third part, his and their heirs, executors, and administrators, in the same or like manner as if all of the said trustees had joined in, or unanimously determined or resolved upon or assented to the same, any thing hereinbefore contained, or any rule of law or equity to the contrary thereof in any wise notwithstanding. PROVIDED also (1), and it is hereby further agreed and declared by and between the parties to these presents, that in case the said (*trustees*) or any or either of them, shall happen to depart this life, or be desirous to resign, or be discharged from, or become incapable to act in the trusts in him or them reposed by these presents, or the said several deeds, conveyances, assignments, and assurances bearing even date with these presents, or shall be about to leave the United Kingdom and reside abroad at any time before the same trusts shall be fully performed and executed, then and in every such case it shall be lawful for the survivors or survivor of them the said trustees, or the heirs, executors, and administrators of the last survivor, or the only continuing or acting trustees or trustee for the time being, and they and he are

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Power of appointing new trustees in case of death, &c.

(1) It is proper that a clause should be introduced for the appointment of new trustees in case of death, &c. as well for the general safety of the trust property, as because the survivors cannot do it of their own authority; *Buchannon v. Hamilton*, 5 Ves. 722; and the court will not supply the omission, should it be required. See *Bayley v. Mansell*, 4 Madd. 226.

Appointment of trustees.

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hereby required from time to time, and as often as any such event shall happen, to nominate and appoint some other fit and proper person or persons, whether a creditor or creditors of the said (*debtor*) [*or debtors*, or of either of them] or not, to be a trustee or trustees in the room or stead of him or them so dying, desiring to resign, or be discharged from, or becoming incapable to act in the said trusts, or going to reside abroad; and when and as often as any such new trustees or trustee shall be nominated and appointed, all and every the former, prior, or surviving trustees or trustee, their or his heirs, executors, and administrators, shall convey, assign, transfer, and assure all and singular the trust estates, money, property, and premises, hereby or by the several conveyances or assurances of even date herewith, or any or either of them, vested in them or him, (or so much thereof respectively as shall remain unsold, undisposed of, or unapplied, in pursuance thereof or of these presents, (after deducting thereout his or their own reasonable expenses in or about the execution of the said trusts up to that time) so and in such manner as that the same respectively may become or be legally and effectually vested in, and under the control of the continuing or only acting trustees or trustee, and such new trustees or trustee, or wholly in such new trustees, as the case may require, upon the several trusts, and to and for the several ends, intents, and purposes hereinbefore declared or expressed concerning the same, or such and so many of them as shall be then subsisting or capable of taking

effect; and all and every such new trustees or trustee shall thenceforth act in the management and execution of the said trusts in the same or like manner, to all intents and purposes, and with the same or like powers and authorities, as well in giving receipts and other discharges, as in all other matters and things whatsoever, as if he or they had been appointed a trustee or trustees for the same purposes by these presents, and the said several deeds, conveyances, assignments, and assurances aforesaid; and shall have full power to settle and allow the accounts of the trustees or trustee so dying, resigning, becoming incapable to act, or going to reside abroad; and the same accounts, when so settled and allowed, shall be conclusive on all persons entitled to any benefit under the trusts of these presents. PROVIDED also, and it is hereby further declared and agreed by and between the several parties hereto that no one or more of the trustees hereby nominated and appointed, nor any other trustees or trustee to be hereafter nominated and appointed in pursuance of these presents or otherwise, nor the heirs, executors, or administrators of them, or of any or either of them, shall be charged or chargeable with or for any more or other monies or property than the same trustee or trustees respectively shall actually receive, or which shall come to his or their hands by virtue of the trusts hereby in him or them reposed, notwithstanding his, their, or any or either of their giving or signing, or joining in any receipt or receipts, or other discharge or acquittance for any such money or

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Trustees not to
be answerable
for each other.

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property, for the sake of conformity only (1), or the satisfaction of the person or persons paying or delivering the same, without any such money or property having been paid to or come to the hands of him or them respectively; and that no one or more of them shall be answerable or accountable for the other or others of them (2), nor for the acts, receipts, neglects, or defaults of the other or others of them, but each and every of them only and solely, for his own acts, receipts, neglects, or defaults; and that he, they, or any of them, shall

Liability of
trustees joining
in receipts.

(1) A trustee joining in a receipt for money will at law (especially as between creditors who are entitled to the utmost favour) be liable to account for it, although he did not actually receive it, unless it be otherwise declared; and the receipt being conclusive evidence, no inquiry, it has been said, can be directed as to the fact, *Bartlett v. Hodgson*, 1 Durnf. and E. 42; but as the receipt of one or more of the trustees only would not be a discharge, it is a matter of necessity on the part of the trustees, that they should all join, although one of them alone can actually receive the money; the courts of equity therefore consider this matter in a more reasonable point of view, and hold those only to be liable who actually received, or concurred in the appropriation of the money. See *Fellowes v. Mitchell*, 1 P. Wms. 81, *Churchill v. Hobson*, *ib.* 241, *Leigh v. Barry*, 3 Atk. 584, *Sadler v. Hobbs*, 2 Brow. Ch. Ca. 117; but as there have been a great contrariety of cases on this head, it seems proper, for the satisfaction of trustees, that an express clause to exempt them from a joint liability, should be inserted; and see *Chambers v. Minchin*, 7 Ves. 186. *French v. Hobson*, 9 *ib.* 103.

Trustees not
liable for casual
losses.

(2) Trustees will not be chargeable with loss occasioned by failure of a banker, or other accident which they could not avoid or foresee; *Adams v. Claxton*, 6 Ves. jun. 226; but otherwise if the loss be occasioned by gross negligence, although not originating in any corrupt motive or wilful intent; *Hovey v. Blackman*, 4 Ves. 596, 609, *Caffrey v. Darby*, 6 *ib.* 488, *Chambers v. Minchin*, 7 *ib.* 186; but, for the reason given in the last note, it is usual to exonerate them by an express provision.

not be answerable or accountable for the failure or insolvency of any tenant or tenants, or of any banker, broker, or other person or persons, with whom or in whose hands the said trust monies and property, or any part thereof, shall or may be deposited or lodged for safe custody, or otherwise in the due execution of the trusts of these presents, nor for any agent, clerk, attorney, solicitor, servant, or other person or persons to be employed by him or them in the execution, conducting, or management of the same trusts, or in the payment or application of the trust money or property; nor for the rise or fall, or failure or deficiency of or in any stock, funds, or other securities, in or upon which the same or any part thereof, shall or may be placed out or invested; nor for any delay in suing any debtor or debtors of or to the said trust estate; nor for the failure or non-payment of or in any bill or bills of exchange, or other security or securities, given by any such debtor or debtors, nor for any other loss, detriment, or damage whatsoever, which may happen to the said trust property or premises in the execution of the aforesaid trusts, or in relation thereto, except the same shall happen by or through his or their own wilful neglect, omission, or default, and then and in that case each person respectively shall singly and alone be answerable for such loss or damage as shall arise from his own proper neglect, omission, or default (1). AND

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Nor for ac-
cidental losses.

(1) A clause is usually inserted here authorising the trustees to retain their expenses; but this is not only unnecessary because

Trustees' ex-
penses.

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Covenant by
creditors to
indemnify
trustees.

it is moreover hereby further declared and agreed by and between the parties to these presents, so far as they are respectively interested, each and every of the several persons parties hereto, of the second and third parts respectively, (but separately and apart from the other and others of them), doth, for himself and herself respectively, and his and her heirs, executors, administrators, and partners, covenant, promise, declare, and agree, with and to the said (*trustees*), and each of them and their respective executors, administrators, and assigns, that in case any one or more of them the said (*trustees*) or any other trustee or trustees of the said trust premises for the time being, his or their heirs, executors, or administrators, shall sustain or incur any loss, costs, charges, damages, or expenses, in the execution of the trusts hereinbefore contained or in relation thereto, each of them the said persons, parties to these presents of the second and third parts respectively, his and her executors, administrators, or partners, shall and will, when thereunto required by any such trustees or trustee, answer and pay to him and them respectively, and his and their respective executors or administrators, such sum or sums of money as shall be a due and just proportion of them the said creditors respectively, of or in the said losses, costs, charges, damages, and expenses, and

they may retain them without any such clause, (see *ante*, p. 444, n. (2)), but because the payment of the trustees' expenses is in the present instance made a part of the trusts; see *ante*, p. 444.

which proportion it is hereby agreed shall be estimated by and according to the full amount of all the debts due to the creditors respectively, who are or shall become parties to or otherwise accede to these presents, so and in such sort and manner that each of the said creditors, his or her executors or administrators, shall contribute only in proportion to the debt or debts due to him or her respectively, as compared with the full amount of the debts owing to all and every of the said creditors (1). PROVIDED ALWAYS, and it is hereby lastly declared and agreed by and between the said parties to these presents, that in case any creditor of the said (*debtor*) whose debt amounts to the sum of £ , or any of such creditors, whose debts in the whole amount to the sum of £ , except only such of them whose debts are under the sum of £ , or who shall choose to rely on their present securities for the same), shall not execute or otherwise accede to these presents, within the space of calendar months next ensuing the date hereof, if resident within the United Kingdom of Great Britain and Ireland, or within the space of calendar months, if resident elsewhere, or in case any commission of bankruptcy shall issue against the said (*debtor*), then these presents, so far as the same shall not have been carried into effect, but with-

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If creditors do
not come in,
deed to be void.

(1) If any suit be now depending or expected to be instituted, add as *post*, rider (B), p. 492.

Suits depend-
ing.

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out prejudice thereto, so far as the same may have been carried into effect, and subject and without prejudice to any sale, mortgage, or other disposition of the same premises, or any part thereof, which shall have been previously made, shall, at the option and election of either of the said creditors parties hereto, be and be considered to be null and void (1) to all intents and purposes whatsoever, and that then and in such case the monies which shall be received (if any) by all or any of the creditors of the said (*debtor*) shall go and be repaid unto the said (*debtor*) his executors or administrators, any thing hereinbefore contained or implied to the contrary thereof, in any wise notwithstanding. IN WITNESS, &c.

(1) Although the deed will be void at law if the creditors do not come in within the time specified, yet if they act under it, it will be upheld in equity; see *Spottiswode v. Stockdale, Cooper*, 102, and *ante*, p. 394, n. (2).

Privilege of
parliament.

If the debtor be or be likely to become a peer or member of parliament, see *ante*, Vol. V. p. 232, and *post*, p. 495, rider (D).

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(A) Clauses to be inserted in a conveyance in trust for numerous creditors of a large concern to be managed by trustees for liquidating of the debts (1).

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“AND for the better and more convenient management of the said trust estates and premises, for the benefit of the said several creditors and claimants thereupon, it is hereby further agreed and declared that a general meeting of the creditors of the said concern shall be convened, had, and holden in the months of and during the continuance of the said trusts, at, &c. or at such other place or places as shall be fixed or agreed upon by the trustees for the time being upon and for the general affairs thereof, and such other particular ends and purposes as are hereinafter expressed. AND it is hereby declared and agreed that the decision of every question or proposition, matter or thing which shall be propounded or discussed at any such or other general meeting of the said creditors upon the concerns thereof shall be by the show of hands. AND it is hereby agreed and declared that three-fourth parts in number of the members present shall in all cases be necessary to constitute a majority, and render the decision upon such question, proposition, matter, or thing, conclusive and binding upon all and every the creditors of the said trust premises. AND it is hereby further agreed, that the trustees for the time being of the said trust premises shall have and be invested with, and they are hereby clothed and invested with full power and authority to superintend, order, conduct, and regulate all and singular the affairs and business of the said theatre, (*or as the case may be*) and all matters

Periodical
meeting of
creditors.

Rules, &c. at
such meetings.

Powers of the
trustees.

(1) It will be perceived that these clauses were extracted from a draft prepared relative to the concerns of a theatre; but most of them will be found to be equally suited to any other concern of similar magnitude.

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Trustees may
appoint agents,
&c.

and things whatsoever relating to or concerning the same. AND it is hereby further declared, granted, and agreed that such the said power and authority shall also include and extend to the convoking general meetings of the said creditors upon the affairs of the said trust premises when, as often, and in such manner and form as to them shall seem necessary or expedient, (they the said trustees at all times giving unto each of the said creditors three days previous notice in writing at the least of every such meeting or proposed meeting of the said members, to be addressed to his or her then last or reputed place of abode, and to contain the general purport or occasion of every such meeting). AND also to the hiring, engaging, retaining, employing, removing and displacing the several principal agents, officers, performers, and servants to be employed in or about the business or concern of the said theatre, and the settling and paying such salaries, allowances, wages, claims, and demands to the said several officers, performers, clerks, agents, and servants as to them shall seem reasonable and proper, as also to act in all other respects whatsoever relative to the conduct and equal management of the concerns of the said theatre in such way as they the said trustees shall from time to time think most proper for the benefit and advantage of the said creditors. AND it is hereby agreed and declared that the said trustees for the time being shall be authorised to allow and pay out of the produce of the capital stock of the proprietors of the said theatre such annual or other sums of money for and in consideration of the trouble and attendance of such or other proprietors of the said theatre, in or about the concerns thereof, as they the said trustees shall think just and reasonable. PROVIDED ALWAYS, and it is hereby further agreed and declared, that the said trustees may from time to time confide in the said proprietors or the principal agents or superintendants of the concerns of the theatre, or any or either of them, the purchasing for and on behalf of the said creditors, all or any of the scenes, utensils, and implements used or to be used or employed in the said theatre, and the giving directions relative to the parts of the different performers, and to employ the inferior servants and

workmen employed in the said theatre, and the appointing, ascertaining, settling, and paying the wages, claims, and reasonable demands, of or due to such performers and servants respectively, they the said trustees taking at their discretion sufficient security from such proprietors, principal agents, or superintendants for the due and faithful discharge of the trusts in them respectively reposed. AND it is further agreed and declared, that the trustees for the time being shall and may, and they are hereby authorised and directed to depute and appoint a proper and fit person or persons to act as treasurer or treasurers of the theatre for and during the pleasure of them the said trustees, in the names of which treasurer or treasurers the monies which shall or may be from time to time received by or on account of the said theatre, shall be placed in the hands of a banker or bankers for the time being, to be named by the said trustees. AND it is hereby agreed and declared that all and every draft and drafts to be drawn or issued upon such banker or bankers shall be drawn and issued by the express order and discretion of some or one of the trustees and not otherwise, and that every such draft shall be signed by two in number at the least of the said trustees, and witnessed by the acting manager thereof for the time being, before the same shall be perfected or issued for payment. AND it is hereby further agreed and declared, that the trustees for the time being shall meet at least once in every month during the period of their trusteeship, upon the general concerns of the said theatre. AND it is hereby further agreed and declared, that any three in number of the said trustees for the time being duly convened or assembled upon the affairs of the said theatre, shall be and constitute an effective and acting body, as well for all or any of the purposes hereinbefore or hereinafter particularly mentioned as for the exercise of all and every or any other the powers and authorities which shall at any time be in them vested by virtue of these presents, or other lawful and sufficient authority. AND it is hereby further agreed and declared, that if upon the discussion of any measure, question, or proposition by the said trustees relative to any of the affairs of the said trustees, there shall

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meeting of
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Power of
trustees.

be an equal value of voices, suffrages, or opinions for and against any such measure, question, or proposition, then and in every such case the chairman for the time being of the meeting shall have a casting or deciding vote respecting the measure, question, or proposition then under consideration. AND it is hereby further agreed and declared, that all and singular the estate, property, and effects of the said theatre shall be and hereby is fully and absolutely vested in the said trustees for the time being, who shall at all times and from time to time be authorised and empowered, and they are hereby fully, absolutely, and especially authorised and empowered to make, take, and accept of, and negotiate, contract, or agree for, at their discretion, in the name and for and on behalf of the said creditors, all and every or any purchases, sales, demises, leases, mortgages, loans, securities, contracts, and agreements whatsoever, which they shall in their judgment think proper, and for the advantage of the said creditors, and with, under, and subject to such terms and conditions, and at and for such rents and prices as they the said trustees shall by and with the advice of their solicitor or counsel think proper and expedient in that behalf, and to receive and take all and singular the rents and arrears of rents due or payable for or in respect of any messuages, lands, or hereditaments belonging to the said theatre, and make all such allowances for taxes or otherwise as may be just and proper, and upon non-payment of any such rent or rents to distrain and enter or re-enter according to law upon the premises for which such rent or rents shall be due; and also to demand, sue for, recover, and receive all and singular other monies, debts due, duties, goods, chattels, and effects at any time and from time to time belonging or to belong to the said theatre, with full power to compound for or release any debt, duty, or demand for and on behalf of the theatre, and to allow, sign, or consent to the certificate or licence of any bankrupt or other creditor of the said theatre. AND further, to commence, prosecute, and defend, and enter or cause to be entered, and accept of declarations, or other pleadings and proceedings in any action or actions, suit or suits, real or personal, in any court or

courts of law or equity, for or in respect of any sum or sums of money, or other debt, duty, right, title, matter, or thing whatsoever of or relating to the concerns of the said theatre, or to discontinue or be nonsuit therein, or to compromise or leave to arbitration the measure in question or dispute, or otherwise act therein in every manner and respect as they, with the advice of their counsel or solicitor, shall think most for the benefit and advantage of the said creditors. AND it is hereby declared and agreed, that they the said trustees or any three of them shall and may, and they are hereby expressly authorised and empowered to sign, seal, and deliver all and every, or any deed or deeds, conveyances and assurances, writings and proceedings in the law whatsoever necessary or proper to carry all, every, or any such purchases, sales, mortgages, leases, contracts, or other compositions, arbitrations, measures, and things aforesaid into effect and execution, or to substantiate, validate, discontinue, or annul any such action, suit, or other matter or thing aforesaid. AND it is hereby declared, that the receipt or receipts of the said trustees, or any two of them, shall be good, sufficient, and absolute discharges to any and every vendor, mortgagor, lessee, or other person or persons by whom any purchase or mortgage money, rent, or other monies shall be paid, and the person or persons so paying the same, his, her, or their heirs, executors, or assigns shall not in any case or event be answerable or liable to see to the due application of such monies, or answerable for the misapplication or nonapplication thereof or of any part thereof."

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Covenant by
creditors to pay
and indemnify
trustees against
expenses of
suits.

(B) If a suit be depending, or expected to arise relative to any part of the debtor's estate, add, (*ante*, p. 485).

“AND the said several creditors of the said (*debtor*) parties hereto, for themselves severally and respectively, and for their several and respective heirs, executors, administrators, and assigns, and not the one for the other, or for the heirs, executors, administrators, or assigns of the other, do and each and every of them doth covenant, promise, and agree with and to the said (*trustees*) their heirs, executors, administrators, and assigns by these presents, that they the said several creditors, their respective executors, administrators, or assigns, shall and will from time to time advance and pay to the said (*trustees*) their executors, administrators, or assigns upon request, their several and respective proportions according to the quantum or amount of their said several and respective debts, of all and every such sum and sums of money as they the said (*trustees*) or either of them, shall find necessary, and direct to be paid for or towards the carrying on or prosecuting the said suit now depending in the said court of Chancery, or the commencing or prosecuting any other suit at law or in equity against, &c. or against any other person or persons whomsoever, for or concerning the said messuages, &c. situated, &c. (*or as the case may be*), or any part or parcel thereof, or to reimburse any cost, charge, or expense which they the said (*trustees*) or either of them, or their respective executors, administrators, or assigns, shall expend, disburse, or be put unto in relation to any such, or in or about the execution or performance of the trust hereby in them reposed. PROVIDED ALWAYS that if the major part of the said creditors parties hereto shall at any time agree to stop further proceedings, and by writing under their hands give notice thereof to the said (*trustees*), then and from thenceforth all suits and proceedings shall be stopped, or else shall be carried on by the rest

of the said creditors at their own proper charge, and from that time the persons giving such notice shall be entirely discharged from any further contribution or payment in respect thereof, and any sum or sums of money, or benefit or advantage which shall be recovered, received, or obtained, from or by such proceedings, shall be divided and paid unto and amongst, or otherwise had and enjoyed by the rest of the said creditors to and for their own respective proper use and behoof: And further, that if any sum or sums of money shall be thereby received or obtained, the same shall in the first place go and be applied to answer and reimburse the costs and charges of prosecuting the said suit, and of carrying on such other suits or proceedings as shall be thought proper for the ends and purposes aforesaid, until such costs and charges shall be therewith or otherwise fully reimbursed and paid."

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Full Form.)*

DEBTOR
AND
CREDITOR.

Trusts of Money.
(Full Form.)

(C) If, by reason of the debtor having a life estate only in the premises, or for any other reason, it is intended to insure his life, add (1),

Covenant by
debtor to ap-
pear at in-
surance office.

“AND the said (*debtor*) doth hereby further covenant and agree with the said (*trustees*) and with his said creditors parties hereto, and each and every of them, in the manner and form aforesaid, that he the said (*debtor*) shall and will at any time or times hereafter, at the request of them, or any or either of them, and upon having reasonable notice given to him thereof, appear in person at any office or offices of insurance within the cities of London or Westminster, or send or cause to be sent, to any such office or offices notice in writing of his place of abode, together with a certificate, or other satisfactory document, of the state of his health, in order that he, they, or any or either of them, may insure any sum or sums of money upon the life of him the said (*debtor*) if he or they shall think proper so to do. AND that in case of any such assurance being made, he the said (*debtor*) shall not nor will leave the United Kingdom of Great Britain and Ireland, without giving unto the said trustees or trustee for the time being one calendar month's previous notice thereof, nor do or cause to be done any act or thing whatsoever, whereby any assurance or assurances which may be so made shall or may be vacated, annulled, rendered void or voidable, or otherwise prejudicially affected in any manner howsoever.”

Assignment
of policy.

(1) If a subsisting policy of the debtor is to be assigned, see *post*, No. IX. rider (A).

DEBTOR
AND
CREDITOR.(D) Waiver of privilege of parliament (1), (see *ante*, p. 486).*Trusts of Money.*
(Full Form.)

“AND WHEREAS, there is a probability that the said (*debtor*) may, before the satisfaction of the aforesaid trusts, be chosen a member of parliament, or advanced to the dignity of a peer, in either of which cases he will be entitled to the privilege of parliament, whereby his said creditors, or some of them, may be hindered or delayed in the recovery of their said debts, in the event of his forfeiting the conditional licence and release hereinbefore given to him on his observance, performance, and conformity as hereinbefore is mentioned. Now the said (*debtor*) doth for himself, his heirs, executors, and administrators, hereby covenant, promise, and declare to and with the said (*trustees*) their heirs, executors, administrators, and assigns, that if he the said (*debtor*) shall at any time hereafter, by reason of being elected a member of the House of Commons, or being raised to the dignity of a peer of this realm, or by or for any other reason or means shall be or become entitled to privilege of parliament, or other privilege or exemption from or against any personal arrest or liability to or by his said creditors, or any or either of them, he the said (*debtor*) shall not nor will claim or avail himself of such privilege or exemption, either at law, in equity, or otherwise howsoever, in any action, suit, or proceeding which they the said trustees or his said creditors, or any or either of them respectively, shall or may prosecute or commence against him the said (*debtor*) for or in respect of his said debts, or any or either of them.”

Waiver of privilege.

(1) See also, *ante*, Vol. V. p. 232.

DEBTOR
AND
CREDITOR.

No. V.

*Conveyance of
Freeholds
for Creditors.
(Concise Form.)*

*A Conveyance of Freehold Premises to Trustees in
Trust for Creditors, (Concise Form).*

Variations as in Margin below (1).

THIS INDENTURE, of three parts, made the
day of _____ in the year of our Lord _____.
Parties. BETWEEN (*the debtor*) of, &c. _____ of the first
part, (*the trustees*) of, &c. _____ (creditors of the
said (*debtor*), and also trustees named and ap-
pointed on behalf of themselves and other the
creditors of the said (*debtor*) for the purposes
hereinafter mentioned) of the second part, and
the several other persons, creditors of the said
(*debtor*) who by themselves or their respective
attornies, have executed or shall hereafter execute
or accede to these presents, of the third part.
Recital of seisin. WHEREAS the said (*debtor*) is seised (2) in his de-
mesne as of fee of the messuage, lands, and here-
ditaments hereinafter described, and being in-

(1) See also notes and variations, *ante*, No. IV. (A) p. 398,
et seq. in margins.

Trustee.

(2) If the debtor took the estate to himself and a trustee for
preventing dower, recite here the deed by which it is so limited
to him, stating the power of appointment nearly verbatim; as
ante, pp. 29, 400, n. (3).

Tenant in tail.

If the debtor be tenant in tail only of the premises, recite
shortly the deed or will by which the estate tail was created;
as *ante*, p. 401.

debted unto divers persons in various sums of money which he is at present unable to pay, hath agreed to convey and assure his said messuage, lands, and hereditaments unto the said (*trustees*) in trust by sale or other disposition thereof to pay the same, and for other the purposes hereinafter expressed. Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, [and in consideration of the sum of 10s. of lawful money of England, to the said (*debtor*) in hand well and truly paid by the said (*trustees*) at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged)] HE (1) the said (*debtor*) (2) HATH granted, bargained, sold, aliened, and released, and by these presents BOTH grant, bargain, sell, alien, release, and confirm, unto the said (*trustees*) and their heirs (3) ALL, &c. (4) or howsoever

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CREDITOR.

Conveyance of
Freeholds
for Creditors.
(Concise Form.)

Witness, that
in considera-
tion, &c.

The debtor
grants and
releases.

Parcels.

(1) If he be tenant for life only, recite the deed or will by which he derives his title, as *ante*, p. 168. Tenant for life.

If he be entitled to a moiety or other portion only of the premises, see Vol. I. No. XXVI. Moiety, &c.

If in remainder or reversion only, see Vol. I. No. XXIV. Remainder, &c.

If the debtor be tenant in tail, see *ante*, p. 436. Tenant in tail.

(2) If the debtor took the estate to himself and a trustee to prevent dower, insert here the appointment of the estate, as *ante*, p. 30, n. (39), and p. 402. Trustee.

(3) If the conveyance be of a moiety or other portion only of the estate, see Vol. I. No. XXVI. p. 385. Moiety, &c.

If of a remainder or reversion, see *ibid.* No. XXIV. p. 346. Remainder, &c.

(4) Here describe the subject of the conveyance by its ancient and present name, situation, tenancy, &c. and see *ante*, Vol. I. p. 405, n. (†); and for general words applicable to different species of real property, see INDEX, *voce* GENERAL WORDS. Parcels.

**DEBTOR
AND
CREDITOR.**

*Conveyance of
Freeholds
for Creditors.
(Concise Form.)*

General appur-
tenances.

Reference to
the bargain and
sale for a year.

otherwise the said messuage, lands, hereditaments and premises, or any part thereof, now are or is, or heretofore were or was situated, tenanted, called, known, or described, [and also all other the messuages, lands, tenements, and hereditaments, if any, comprised in the indenture of bargain and sale for a year hereinafter referred to.]

TOGETHER with all outhouses, buildings, yards, cellars, vaults, areas, ancient and other lights, ways, water-courses, trees, timber, and other trees, rights of common of every kind, and all and all manner of other rights, privileges, easements, advantages, and appurtenances whatsoever to the said hereditaments and premises, or any part thereof belonging, or therewith holden, used, occupied, or enjoyed, (ALL which said hereditaments and premises are now legally vested in the said (*trustees*) by virtue of a bargain and sale for a year to them thereof made by the said (*debtor*) for 5s. consideration, by indenture (1) bearing date the day next before the day of the date of these presents, and by force of the statute made for transferring uses into possession) and the reversion and reversions, remainder and remainders, and rents, issues, and profits of the same premises, and all the estate, right, title, and interest whatsoever, of him the said (*debtor*) in, to, or concerning the same.

Lease for a
year.

(1) See the form of this bargain and sale, Vol. I. No. XIV. p. 117, or if it should be preferred that the lease for a year and the release should be by the same deed, see *ibid.* p. 166.

TOGETHER with all deeds, muniments, writings, and evidences, which in any wise relate to the same premises, or to any part thereof, and now or hereafter being or to be in the possession or lawful power of the said (*debtor*) his heirs, executors, or administrators, or which he or they can or may procure without suit at law or in equity. To HAVE AND TO HOLD (1) the messuage, lands, tenements, and hereditaments hereinbefore described, and all and singular other the premises by these presents granted and released, or otherwise assured or intended so to be, with their and every of their appurtenances, unto the said (*trustees*) and their heirs, to the use and behoof of them the (*trustees*), their heirs and assigns for ever, but nevertheless upon the trusts, and to and for the ends, intents, and purposes hereinafter declared, expressed, or referred unto concerning the same, that is to say, UPON TRUST, that they the said (*trustees*) and the [survivors or] survivor of them, or the heirs, executors, or administrators of such survivor, and their and his assigns, shall and do as soon after the execution of these presents as they or he shall think it expedient, of their or his own proper authority, and without the concur-

DEBTOR
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Conveyance of
Freeholds
for Creditors.
(Concise Form.)

Grant of title
deeds.

And copies.

To HOLD upon
trusts herein-
after men-
tioned.

Upon trust to
sell, &c.

(1) If the conveyance be of a moiety or other portion only of the estate, see Vol. I. No. XXVI. p. 388.

Moiety, &c.

If of a remainder or reversion, see No. XXIV. p. 349.

Remainder, &c.

If it be an estate for life only, see *ibid.* No. XXIII. p. 334, and *ante*, p. 175.

Life.

If an estate tail, see *ante*, p. 144, n. (1).

Tail.

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CREDITOR.

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Freeholds
for Creditors.
(Concise Form.)

Receipts of
trustees to
discharge.

The trustees to
stand possessed
of the money
to arise by
such sale.

rence of or any further power or authority from the said (*debtor*) or his heirs, than is herein contained, sell and dispose of, and convey and assure either absolutely or by way of mortgage, in fee-simple, or for any term or number of years, and either together or in parcels, and in such way and manner as they or he shall think fit, ALL and singular or any part of the messuage, lands, and hereditaments hereby granted and released, or otherwise assured or intended so to be, with their and every of their appurtenances, for such price or prices in money or other equivalent as they the said trustees or trustee shall deem reasonable; and receive and sign effectual receipts and discharges for the purchase money, or other consideration, to be paid or given for the same; and it is hereby declared by the several parties hereto, that the person or persons paying or giving such money or consideration, and obtaining such receipt or discharge from the said trustees or trustee, or such one or more of them as shall be the only acting trustees or trustee for the time being, shall not afterward be liable to see to the application of the same, or answerable for the loss or misapplication thereof, or of any part thereof (1). AND it is hereby further agreed and declared by and between the several parties hereto, according to their respective interests, that they the said (*trustees*) and the [survivors and] survivor of

(1) If part of the premises be copyhold, add here a covenant to surrender them, as *ante*, p. 437.

them, and the heirs, executors, and administrators of such survivor, and their and his assigns, shall stand and be possessed of and interested in all and singular the sum and sums of money or other consideration to arise or be produced by any sale, mortgage, or other disposition which shall be made of the said hereditaments or of any part thereof, under or by virtue of these presents, and of and in the rents, issues, and profits thereof in the mean time, UPON THE TRUSTS, and to and for the ends, intents, and purposes “declared or expressed concerning the same, in or by a certain indenture already prepared and engrossed, and bearing or intended to bear even date with these presents and referring hereunto” (1). AND the said (*debtor*) for himself, his heirs, executors, and administrators, doth hereby covenant and declare to and with the said (*trustees*) their heirs and assigns in the manner following, (that is to say) that [for and notwithstanding any act, deed, matter, or thing by him

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Conveyance of
Freeholds
for Creditors.
(Concise Form.)

Upon trust to
defray ex-
penses, &c.

Covenant by
debtor that he
is seised.

(1) See this deed of trust in next precedent, No. V. (A), Trust deed. *post*, p. 506.

But if it be intended that the declaration of trust shall be included in the deed of conveyance, instead of the words within inverted commas, say,

Trusts declared
in deed of con-
veyance.

“Next hereinafter declared or expressed concerning the same, that is to say,” and see *post*, p. 509, marg. (*).

If the wife of the debtor be entitled to dower, add here a covenant to levy a fine; as *ante*, p. 407, n. (14).

Wife.

If the debtor took the estate to himself and a trustee to bar dower, add here a covenant by the trustee that he has not incumbered; see *ante*, p. 421, n. (25).

Trustee.

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AND
CREDITOR.

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Freeholds
for Creditors.
(Concise Form.)

Hath right to
convey.

the said (*debtor*) [or any of his ancestors,] made, done, or knowingly suffered to the contrary (save as in or by these presents is recited or otherwise particularly mentioned)], he the said (*debtor*) at the time of the sealing and delivery of these presents is lawfully, rightfully, and absolutely seised in his demesne as of fee, in his own right, and to his own use, of all and singular the hereditaments and premises hereinbefore granted and released, or otherwise assured, or intended so to be, with their and every of their appurtenances, as of, in, and for a good and indefeasible estate of inheritance (1) in fee-simple in possession (2) without there being any manner of trust, condition, qualification, matter, or thing whatsoever, to impeach, make void, incumber, or prejudicially affect the same in any wise howsoever, save as appears by these presents (3). [AND also now hath in

Life estate.

(1) If the debtor have an estate for life only, say,

“Of an estate of freehold, for and during the term of his natural life, under or by virtue of the hereinbefore in part recited indenture [*or will,*]” &c.

Copyholds.

(2) If part of the land be copyhold, add,

“And of and in the copyhold or customary parts thereof, of and for a good customary estate of inheritance in fee-simple, according to the custom of the said manor of .”

Dower.

(3) If the debtor's wife be entitled to dower, say,

“And such right or title to dower as she the said (*wife*) has in or out of the said premises, as the wife of the said (*debtor*) and which is intended to be barred and extinguished, by the fine hereinbefore agreed to be levied as aforesaid.”

himself full power, and lawful right and authority by these presents to release and assure (1) the same hereditaments and premises, and the reversion and inheritance thereof, unto and to the use of the said (*trustees*) and their heirs, upon the trusts, in the manner, and for the ends and purposes hereinbefore declared, expressed, [or referred unto,] concerning the same.] AND that all and singular the same hereditaments and premises, and the rents, issues, and profits thereof shall or lawfully may be respectively had, holden, received, and applied, according to the true intent and meaning of these presents, without any hinderance, interruption, claim, or demand whatsoever from or by him the said (*debtor*) or any person or persons whomsoever, now or hereafter claiming or entitled by, from, or under him or them, or his or their acts, means, or defaults, save only as aforesaid. AND that free and clear, and absolutely acquitted, exonerated, and discharged of and from all former and other grants, releases, conveyances, assurances, estates, rights, titles, interests, charges,

DEBTOR
AND
CREDITOR.

Conveyance of
Freeholds
for Creditors.
(Concise Form.)

That the trustees
may quietly
enjoy.

Free from in-
cumbrances.

(1) If part of the premises be copyhold, say,

Copyholds.

“ALL and singular the said freehold hereditaments and premises, and to surrender and assure all and singular the said copyhold or customary hereditaments and premises hereinbefore agreed or covenanted to be surrendered, with their respective appurtenances, to the use of the said (*trustees*) their heirs and assigns, in the manner,” &c. *as above*.

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CREDITOR.

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Freeholds
for Creditors.
(Concise Form.)

Further
assurance.

and incumbrances whatsoever, by him or them, or his or their acts, means, or defaults, made, done, or knowingly occasioned or suffered, save only and except as hereinbefore is recited or mentioned. AND further, that he the said (*debtor*) and all other persons so claiming or entitled as lastly aforesaid shall and will from time to time, and at all times hereafter, upon every reasonable request of the said (*trustees*) their heirs or assigns, make; do, acknowledge, levy, suffer, and execute, all such further and other lawful and reasonable acts, deeds, matters, and things whatsoever, as well for the better, more perfectly, or satisfactorily granting, assuring, and confirming the hereditaments and premises hereinbefore described, and intended to be hereby released (1), or any part thereof, unto the said (*trustees*) and their heirs (2), upon and for the trusts, intents, and purposes hereinbefore expressed, or intended, concerning the same, as for conveying or otherwise assuring the same hereditaments and premises, or any part thereof, unto or for any [purchaser or purchasers,

Copyholds.

(1) If part of the premises be copyhold, add,
“ Or covenanted or agreed to be surrendered.”

Copyholds.

(2) If part of the premises be copyhold, add,
“ And for the better and more effectually surrendering and assuring all and singular the said copyhold or customary lands and hereditaments hereinbefore covenanted or agreed to be surrendered, to the use of the said (*trustees*) their heirs and assigns, upon,” &c. *as above*.

mortgagee or mortgagees, or other] person or persons whomsoever, his or their heirs, executors, administrators, and assigns, in such manner and form as they the said (*trustees*) or the survivor of them, or the heirs of such survivor, or their or his assigns, or any such other person or persons as aforesaid, their or any or either of their counsel in the law shall reasonably require or advise (1).
IN WITNESS, &c.

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AND
CREDITOR.

Conveyance of
Freeholds
for Creditors.
(Concise Form.)

(1) See riders, &c. to No. IV. *ante*, p. 434, 435.

Riders.

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Concise Form.)*

No. V. (A).

*Declaration of Trust of Money to arise from Sale
of Estates for Creditors. (Concise Form).*

*Variations where there are two or more Debtors in Co-
partnership.*

Other Variations as in Margin below (1).

THIS INDENTURE of parts, made the
day of , in the year of the reign, &c. ,
and in the year of our Lord . BETWEEN
(*the debtor*) [*or debtors*] of, &c. [copartners
in trade](2) of the first part, (*the trustees*) of,
&c. creditors of the said (*debtor*) [*or debtors*],
and also persons named and appointed on behalf
of themselves, and other the creditors of the said
(*debtor*) [*or debtors*] as trustees of his [*or their*]
real and personal estate and effects for the pur-
poses hereinafter expressed (or referred to) of the

Variations.

(1) See also notes and variations to No. IV. (A), *ante*, p. 439.
Although the form here given is more particularly adapted to
the preceding conveyance of real property, yet, to prevent sub-
sequent repetitions, such variations have been introduced (prin-
cipally within brackets) as are calculated to declare the trusts
of money to arise from personal and chattel interests also.

Copartners.

(2) If there be two or more debtors copartners in trade, see
the variations to No. IV. (A), *ante*, p. 441, *et seq.* in addition to
those here introduced.

second part, and the several other persons, creditors also of the said (*debtor*) [*or debtors*] who by themselves or their respective attornies, have subscribed, or shall hereafter subscribe their names, and affixed or affix their seals to these presents, of the third part. WHEREAS the said (*debtor*) [*or debtors*] is [*or are* as well on their private as their copartnership account] indebted unto the said several persons parties to these presents of the second and third parts, in the several sums of money set opposite to the respective names in the schedule or inventory thereof hereunto annexed (1), and being desirous of satisfying and paying the same as far as in him [*or them*] lies, HATH [*or have*] by several conveyances, [*surrenders, assignments,*] and assurances in the law, bearing even date respectively with these presents, and made or expressed to be made between the same persons as are parties hereto, conveyed and assured ALL his [*or their*] several freehold, [*copyhold, and leasehold*] estates, [*stock in trade, and effects,*] therein particularly described or referred to, unto the said (*trustees*) their heirs, [*executors, administrators,*] and assigns, [*according to the nature and quality of the said estates*

DEBTOR
AND
CREDITOR.

Trusts of Money.
(Concise Form.)

Recital of conveyances of
even date.

(1) Although there should not be any schedule of debts in the conveyance to the trustees, which would give the purchasers notice of the debts got in, it will be proper in the declaration of trust of the produce, which is between the debtor, trustees, and creditors only: and see *ante*, p. 439, n. (1).

If there be two or more debtors in copartnership, add, as *ante*, Copartners. No. IV. (B); p. 441, n. (1) (2).

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Concise Form.)*

WITNESS,
Declaration that
the trustees shall
stand possessed
of the money to
arise by sale,
&c.

and property respectively,] UPON TRUST to make sale, or otherwise dispose of [and get in] the same [respectively,] and apply the money to arise and be received thereby, for the several ends, intents, and purposes, and in the manner declared or expressed concerning the same, in or by a certain indenture therein mentioned to have been then already prepared and engrossed, and bearing or intended to bear even date therewith, thereby meaning and referring unto these presents, and the several ends, intents, and purposes hereinafter declared or expressed, as the several parties hereto do hereby acknowledge and declare. Now THIS INDENTURE WITNESSETH, that in pursuance of the said indenture, [or in part recited conveyances and assurances,] and for carrying the trusts thereof into effect, the said several persons, parties hereto, do hereby declare that the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, and their and his assigns, shall stand and be possessed of and interested in all and singular the sum and sums of money which shall be received from or by any sale, mortgage, or other disposition of the hereditaments and property so conveyed or assured as aforesaid, or by sale of the timber or underwood, or the rents, issues, and annual profits thereof in the mean time, or which shall arise by or from any policies of insurance, bonds, or other the personal estate and effects of the said (*debtor*) [or *debtors*, or either of them,] under these presents, or the said conveyances or assurances.

UPON THE TRUSTS, and to and for the ends and purposes following (that is to say) UPON TRUST, in the first place, to pay and apply the monies to arise or be produced by the sale of such part or parts of the said trust estate and effects upon which any person or persons have any mortgage or other specific lien or charge whatever, or a competent part thereof, in and for or towards the satisfaction and discharge of such mortgage, lien, or charge, and in the next place to retain and reimburse themselves respectively, all costs, charges, and expenses which shall have been incurred in preparing and executing these presents, and of the several deeds hereinbefore referred to, or in relation thereto (1). AND then in payment and satisfaction of all rents, taxes, and repairs of or respecting the messuages or tenements and hereditaments herein comprised, and salaries, allowances, and wages to clerks, servants, and agents employed in or about the concerns of the said (*debtor*) [*or debtors.*] AND also of all law and other expenses to be occasioned by or incident to the sale or other disposition of the said hereditaments, [and in collecting the said [joint and separate] debts and effects of the said

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Concise Form.)*

Upon trust to
defray the ex-
penses of the
trusts.

Rent, &c.

Law expenses.

(1) If the debtor be tenant for life, or for any other reason it should be deemed expedient to insure a sum of money upon his life, add,

Debtor tenant
for life.

“ And in insuring the sum of £ upon the life of
the said (*debtor*) [*or debtors.*] ”

DEBTOR
AND
CREDITOR.

Trusts of Money.
(Concise Form.)

Then for pay-
ment of debts
rateably.

(*debtor*) [*or debtors* respectively,] and other the execution of the several trusts by these presents reposed in him and them. AND after payment of the same costs, charges, disbursements, and expenses, then and in the next place UPON TRUST to pay and apply all the residue of the said monies and premises (1) in payment or satisfaction of the several debts and demands (2) owing by him the said (*debtor*) [*or them the said debtors*] to such of his [*or their* respective] creditors, as have executed or shall execute these presents, or their respective executors, administrators, partners, or assigns, rateably and in proportion to the amount of the debts owing to them respectively, without any priority or preference of any one or more of them to the other or others of them, until each of the said creditors, or his or her executors, administrators, partners, or assigns, shall have received the full amount of their respective debts (3), by
equal instalments of s. in the pound
(as soon and as often as the same shall be sufficient for that purpose), in the manner following (that is to say) the first of the said instalments, within the space of calendar months; the second of the said instalments, within the space of calendar months; the third of the said in-

Copartners.

(1) If there be two or more debtors in copartnership, see No. IV. (A), p. 443, n. (1), 446, n. (1).

Legal priority
of debts.

(2) If the debts are to be paid according to their legal priority, see *ibid.* p. 447, n. (1).

Copartners.

(3) If there be two or more debtors in copartnership, see No. IV. (A), p. 449, n. (1).

stalments, within the space of calendar months; and the fourth or last of the said instalments, within the space of calendar months, to be computed respectively from the day of the date of these presents, together with interest for the said several instalments after the rate of £5 per cent. per annum, up to the time of the payment thereof respectively, (with full power, nevertheless, for them the said trustees or trustee to pay off or otherwise exonerate the said trust estate and premises from any liens, charges, or incumbrances affecting the same, or any part thereof), and UPON TRUST that they the said trustees and trustee shall and do in the mean time and until sale or mortgage of the said messuage and hereditaments let, set, and manage the same in such manner as they or he shall think most advantageous, and by and out of the rents, issues, and proceeds thereof, in payment of such interest, repairs, insurances, and outgoings as aforesaid. AND after full payment and satisfaction of all and every the debts and demands, and all costs, charges, and expenses aforesaid, then IN TRUST (1) that they the said trustees or trustee for the time being of the said estates and effects, do and shall pay the residue or surplus of the monies to arise therefrom, and convey, assign, and assure so much and such parts thereof as shall not have been disposed of for the purposes aforesaid, unto the said (*debtor*)

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Concise Form.)*

And surplus to
debtor.

(1) If there be two or more debtors in copartnership, see Copartners. No. IV. (A), p. 450, n. (1).

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Concise Form.)*

Proviso as to
debts not yet
payable.

Power to dis-
charge extents,
&c.

Power to pay
debts in full
not exceeding
£20.

[*or debtors*] his [or their respective] heirs, executors, administrators, and assigns, (according to the respective natures of the said property) [and the respective interests of them the said parties therein] to and for his and their own proper use and benefit. PROVIDED always, and it is hereby declared and agreed by and between the several parties hereto, that in case there shall be any debts or sums of money outstanding against the said (*debtor*) [*or debtors*, or any or either of them], upon or in respect of any bill or bills of exchange, or other securities not yet payable, it shall be lawful for the said trustees or trustee for the time being, if they or he shall think proper, to pay the same, or a dividend thereupon, (abating legal discount for the time which the same shall have to run) in the same or like manner as if the said debts or sums were proved or proveable under a commission of bankruptcy. PROVIDED also, that it shall be lawful for the said trustees or trustee for the time being, if they or he shall think proper, out of the first or any other monies which shall come to his or their respective hands, under or by virtue of these presents, to satisfy and discharge any executions or extents which may have been awarded against the person or property of the said (*debtor*) [*or debtors*, or any or either of them], and also the sheriff's poundage, and other costs and expenses relating thereto, whether regularly payable by the said (*debtor*) [*or debtors*] or by the persons at whose suit such execution or extents may have issued. AND also, if they the

said trustees or trustee shall think proper, to pay the several creditors of the said (*debtor*) [*or debtors, or any or either of them*], whose debts respectively do or shall not exceed, or who shall agree to accept in lieu thereof the sum of £20, the full amount of their respective debts, or the said sum in lieu of the same (1). AND also to pay any of the creditors of the said (*debtor*) [*or debtors, either separately or jointly,*] or any trustee, trustees, or guardian of or for them, who by reason of infancy or other restriction or disability, cannot legally execute or accede to these presents, the full amount of the debts owing to them respectively. AND also to set apart and retain in their or his hands the amount of any debt or debts owing to any of the creditors of the said (*debtor*) [*or debtors, or either of them*], who shall be resident abroad, and shall not have executed or otherwise acceded to these presents, before a final dividend shall have been made of the produce of the said trust estates; and also to pay to such creditors respectively the whole or any part of the money so set apart as to them the said trustees or trustee shall seem expedient, for the purpose of finally closing the trust accounts; and the balance or surplus (if any) of the money so to be set apart, after satisfying the said last mentioned debts, shall belong to, and be considered a part of the general residue of the said trust estates, except as hereinafter pro-

DEBTOR
AND
CREDITOR.

Trusts of Money.
(Concise Form.)

And creditors
under disability.

May set apart
instalments for
creditors
abroad, &c.

(1) If there be two or more debtors in copartnership, see Copartners. No. IV. (A), p. 453, n. (1).

If the debtors carried on the business of bankers, see *ibid.* Bankers.

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Concise Form.)*

Debts to be
proved on oath
if required.

Discretionary
power to admit
debts, &c.

Trustees may
compound with
creditors, and
sign certificates,
&c.

vided. AND it is hereby declared and agreed that all debts owing or alleged to be owing by the said (*debtor*) [*or debtors*, or either of them, as well on their partnership as on their private and separate accounts,] to the said several creditors, shall, if required by the said trustees or trustee, be verified by the affidavits, or affirmation (if Quakers) of the said creditors respectively, as well with respect to the consideration as the amount of the same, to be sworn before a master in Chancery, or a magistrate of the county or place in which such creditors shall respectively reside. PROVIDED always, nevertheless, that it shall be lawful for the said trustees or trustee to admit any debt or debts upon such other evidence as they or he shall think sufficient; AND also to settle the amount of any debt or debts, and the fund or property on which the same ought to be chargeable (1), and also to convey any part of the said trust estate, as a security for or in satisfaction of any debt or debts, in such manner as to the said trustees or trustee shall seem expedient, save only that no security or securities of any creditor or creditors who shall execute these presents, shall thereby be prejudiced or affected in any manner howsoever. AND also that the said trustees or trustee for the time being, shall or may in their or his discretion compound (2) any debt or debts

Copartners.

(1) If there be two or more debtors in copartnership, see No. IV. (A), p. 455, n. (1).

(2) See *ibid.* p. 456, n. (1).

owing to him the said (*debtor*) [*or* them the said *debtors*, or any or either of them,] and accept a part thereof, or a security for the same in full, or give further time for the payment thereof, and refrain from suing for any debts which shall in their or his opinion be bad and desperate, and sign certificates of any persons indebted to the said (*debtor*) [*or debtors*, or either of them,] who shall or may become bankrupt; AND also shall or may make any such agreement or arrangement as shall be deemed reasonable, with any persons possessing any security given by the said (*debtor*) [*or debtors*, or any or either of them severally,] upon any lands or other property of, or holden by him [*or* them, or any or either of them,] by way of mortgage, or as a pledge for money, in order to procure such lands or property to be exonerated from the lien or charge created thereon. AND also shall or may sell all or any part of the trust property for money to be paid on a future day, or on credit, or for any security by way of bill of exchange or otherwise, as the said trustees or trustee shall think expedient. AND shall or may sell and convert into money all contingent interests and securities which cannot be immediately enforced with a prospect of advantage, and all debts which shall be deemed bad or doubtful, or which cannot be collected in a reasonable time. AND shall also be at liberty, and have full authority to buy in the trust property, or any part thereof, which shall be offered for sale at public auction, and to

DEBTOR
AND
CREDITOR.

Trusts of Money.
(Concise Form.)

May exonerate
property.

Trustees may
give time for
payment of
purchase-
money.

May sell con-
tingent inter-
ests and doubt-
ful debts.

May buy in
estates at
auction.

**DEBTOR
AND
CREDITOR.**

*Trusts of Money.
(Concise Form.)*

May arrange
with creditors
entitled to a
transfer of
stock.

Doubts re-
specting debts,
may be re-
ferred to arbi-
tration.

And so of
creditors.

resell the same at the same or any future auction, or by private contract, without being liable to answer for any loss or diminution in the price or produce of such sale; AND have full power and authority to settle with any creditors who are entitled to have funded property in Bank, India, or other stock, or annuities, replaced or transferred to them, upon such terms as to the said trustees or trustee shall appear advisable. AND it is hereby further declared and agreed by and between the parties to these presents, that in case any difficulty shall arise in ascertaining the amount of any sum or sums due or payable to any creditor or creditors of the said (*debtor*) [*or debtors*, either on their partnership or separate accounts,] the same shall be referred to two persons, the one to be named by the said trustees or trustee, and the other by the said creditor or creditors, and in case of difference between such persons, then by a third person, to be by them named in the usual mode of arbitration, and with usual or proper bonds of submission, and that the award and determination of the persons or person so appointed shall be final and conclusive on all parties entitled to any interest or benefit under these presents. AND also that all differences which shall arise respecting the amount of any sum or sums due or payable to the said (*debtor*) [*or debtors*, or any or either of them jointly or severally,] or relative to or concerning any property claimed as his [*or their*, or any or either of their] own proper effects, or as belong-

ing specifically to any of his [*or their*] creditors, shall or may be settled in the same or like manner, if they or he the said trustees or trustee shall think fit. AND further that the said trustees or trustee shall or may, if they or he shall think fit, hire, or take a counting-house, or other place for carrying on the affairs of the said (*debtor*) [*or debtors*] or the trusts of these presents, and also employ the said (*debtor*) [*or any or either of them the said debtors*] with his [*or their*] consent, or any other person or persons, to assist in the management, sale, disposition, and collection of the estates, property, and effects of the said (*debtor*) [*or debtors, or any or either of them,*] and also in keeping and making up the accounts of the said trust, with such allowances, salaries, or other remunerations, and such discretionary powers and authorities as the said trustees or trustee shall think fit, without being answerable for the conduct of the person or persons so employed, or for any loss which may happen to the said trust estate by reason thereof. AND also that in case it shall be deemed expedient by the said trustees or trustee to commence or defend any actions or suits at law or in equity, relative to the said trust estate, their or his decision in respect thereof shall be binding upon the several parties hereto, and they and he shall at all times be indemnified from and against all costs, charges, damages, and expenses which shall be thereby occasioned. AND also that it shall be lawful for the said trustees or trustee, at their or

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Concise Form.)*

Trustees may
hire counting-
house, clerks,
&c.

May commence
or defend
actions, &c.

Power to give
up certain pro-
perty to debtor.

DEBTOR
AND
CREDITOR.

Trusts of Money.
(Concise Form.)

Receipts of
trustees effec-
tual discharges.

Covenant by
trustees duly
to apply the
monies.

his discretion, to permit the said (*debtor*) [*or any or either of them the said debtors*] to have and use for a time to be limited, or to give and deliver to him [*or them, or any or either of them,*] the absolute property of all or any part of the household goods, furniture, linen, or other wearing apparel, of him the said (*debtor*) [*or of each or any or either of them the said debtors*]. AND it is hereby agreed and expressly declared that the receipts of the trustees or trustee acting for the time being, under these presents, or of any agent or attorney appointed by them or him, shall at all times be effectual discharges for all sums of money, which by such receipts shall be acknowledged to be received, and the person or persons paying the same, their or his heirs, executors, or administrators, shall not afterwards be liable to see to the application thereof, nor be responsible or accountable for the misapplication or nonapplication of the same; any trusts hereinbefore declared, or the schedule of debts hereunto annexed, in anywise notwithstanding. AND each and every of them the said (*trustees*) separately and apart from the others and other of them, for himself, and his heirs, executors, and administrators, doth hereby covenant, promise, and declare with and to the said (*two or three creditors* (1),) their executors, administrators, and assigns, for themselves respectively, and the several other persons parties hereto of the

(1) See No. IV. (A), p. 461, n. (1).

third part, and their respective executors, administrators, and assigns, that they the said (*trustees*) respectively, and their respective executors and administrators, shall and will from time to time, as often as any monies shall be received by them, or any or either of them, (each covenanting separately as aforesaid,) by virtue or in pursuance of these presents, pay and apply the same upon the trusts, and in the manner hereinbefore declared or expressed in respect thereof; and shall and will, in the mean time, pay and deposit the same, and all bills and other securities belonging to the said trust estate unto or with Messrs. , and Co. bankers in , or some other respectable banker or bankers in their or his names or name upon the said trust account. AND shall and will, at the end of every six calendar months next hereafter, or oftener, if thereunto required by any three of the persons, parties hereto of the third part, whose debts together or separately shall amount to £100 or more, make out a full and particular account or statement in writing of or concerning the said trust estate, and produce the same to him or them, or unto such other creditors as shall be present at a meeting to be called for that purpose either by the said trustees or trustee, or such creditors as aforesaid, after fourteen days' notice thereof in the London Gazette, and attend every such meeting, (unless prevented by sickness or other reasonable cause,) and give all requisite explanations for the elucidation of the same accounts, and of the general state of the concerns

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Concise Form.)*

Money in hand
to be deposited
at a banker's.

And accounts
to be stated
every six
months.

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Concise Form.)*

Trustees will
act faithfully.

Cessation of
trusts.

Covenant by
debtor that he
has made a full
discovery.

of the said (*debtor*) [*or debtors*, and of each and every of them]. AND also shall and will in all things act in the execution of the trusts hereby reposed in them and him, to the best of their and his discretion and judgment, for the benefit of the several persons interested therein, without preference or partiality. PROVIDED always, that when all the trusts of these presents shall be performed, as far as in the opinion of the said trustees or trustee is practicable, they or he shall call a meeting of the said creditors by fourteen days' notice in the London Gazette, specifying the purport of such meeting, and shall produce the final accounts of the said trust estate; and the major part in value of the creditors then present shall have full power and authority by their resolution to that effect, to allow the said accounts, and to declare the trustees and trustee for the time being, to be fully acquitted and released from the trusts of these presents, and upon due payment and distribution of the money then in hand, applicable to the trusts hereof, the said trust accounts shall be finally closed. AND the said (*debtor*) [*or each of them the said debtors*, severally and apart from the others and other of them,] doth hereby for himself, his heirs, executors, and administrators, covenant, declare, and agree with and to the said (*trustees*) their heirs, executors, administrators, and assigns, in the manner following (that he the said (*debtor*) has [*or they the said (debtors)* respectively have] at or before the time of the execution of these presents, made a true and faithful discovery to them

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Concise Form.)*

the said (*trustees*) of all and singular his [and their] estate, property, and effects, whether real, personal, or mixed, [and whether on their partnership or respective private accounts,] to the best of his [*or* their respective] knowledge and belief; and that he the said (*debtor*) hath not [*or* they the said (*debtors*) respectively have not] withholden, embezzled, or concealed, nor shall or will withhold, embezzle, or conceal the same, or any part thereof, from the said trustees, or any or either of them, in specie or in account, or otherwise howsoever, and that he the said (*debtor*) [*or* they the said (*debtors*) respectively,] shall and will at any time or times, at the request of the said trustees or trustee, or of any three of the persons parties hereto of the third part, whose debts respectively shall amount to £100 or more, make oath to the truth of the discovery, statement, and accounts by him [*or* them respectively,] delivered of or concerning the same. AND further that he the said (*debtor*) [*or* they the said (*debtors*) respectively] shall and will from time to time, and at all times hereafter, when thereunto required by the said trustees, or either of them, aid and assist them and him, in conducting and managing the concerns of the said trust estate, property and effects, and in the sale or other disposition thereof, to the best of his [*or* their] power and judgment, and from time to time make and give all such discoveries and explanations in relation to his [*or* their] said affairs, as may be necessary or proper to enable the said trustees and other the said creditors parties hereto, to ascertain

And will assist
the trustees in
the execution
of the trusts.

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Concise Form.)*

FURTHER
WITNESS,
Letter of licence
to debtor.

the true and exact state thereof (1). AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the several covenants and assurances hereinbefore contained on the part of the said (*debtor*) [*or (debtors) respectively*] they the said several persons, parties to these presents, of the second and third parts, [HAVE, and each of them HATH, jointly and severally, given and granted, and] by these presents DO, and each of them DOETH, jointly and severally, give and grant unto the said (*debtor*) [*or each of them the said debtors*] from henceforth, and at all times hereafter, until the trustees or trustee for the time being of the said trust estate, by any writing under their or his hand or respective hands, and indorsed on these presents, shall declare the benefit of this present proviso to be forfeited or determined by the non-conformity of the said (*debtor*) [*or the said debtors respectively*] or other sufficient cause, full and absolute liberty and licence (2) to follow and attend to any his [*or their*] affairs, business, matters, or things whatsoever, in any parts of England, Wales, and Scotland respectively, without any arrest, attachment, execution, impediment, or molestation

Debtor to
appear at in-
surance office.

(1) If it be intended to insure the life of the debtor, add here a covenant for his appearing at an insurance office for that purpose, as *ante*, No. IV. (A), p. 466, n. (1).

Licence.

(2) See *ib.* p. 467, n. (1).

Copartners.

If there be two or more debtors copartners, and the trusts are not intended to extend to the copartnership effects, see *post*, p. 569, n. (1).

whatsoever, against his [*or their*] person or estate [*or persons or estates*] by the said parties hereto, of the second and third parts, or any or either of them, their, or any or either of their executors, administrators, partners, or assigns, or by or through their or either of their means, procurement, or privity, for or on account of any debt or debts by him the said (*debtor*) [*or them the said debtors, or any or either of them,*] so owing as aforesaid, (other than and except by the parties hereto of the second part, in execution of the trusts of these presents. AND each of them the said parties to these presents, of the second and third parts respectively, doth hereby also for himself, and herself, and his and her heirs, executors, administrators, and partners, grant, declare, and agree with and to the said (*debtor*) [*or each of them the said debtors*] his [*or their respective*] executors, administrators, and assigns, that if they, or either of them, the said parties hereto, of the second and third parts, or the executors, administrators, or partners of any or either of them, shall or do arrest, attach, or otherwise molest the person or effects of the said (*debtor*) [*or debtors, or of any or either of them,*] contrary to the licence hereinbefore given, or the true intent and meaning of these presents, then and in such case the debt and debts of or belonging to the person or persons, so acting as lastly aforesaid, shall be forfeited and void; and the grant and licence hereby given shall be and operate as an absolute and final release of every such debt or debts respectively,

DEBTOR
AND
CREDITOR.

Trusts of Money.
(Concise Form.)

If the debtor
be sued, the
debt to be lost.

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Concise Form.)*

If fraud, &c.
by debtor,
creditors may
sue.

Creditors not
acceding within
a given time to
be excluded.

and shall and may be pleaded in bar thereto, and to the recovery thereof accordingly (1). PROVIDED always nevertheless, that if it shall appear that the said (*debtor*) has [*or debtors*, or any or either of them respectively have] wilfully concealed any part of his [*or their private or copartnership*] property to the value of £100, or shall be guilty of any wilful breach or default in performance of his [*or their*] covenant hereinbefore contained, [*or if any default shall happen to be made in payment of any of the instalments of the said debts, or the interest thereof, or any of them, or any part or parts thereof respectively, on the several days or times hereinbefore for that purpose appointed,*] then and in either of the said cases it shall be lawful for the several creditors who have executed, or hereafter shall execute these presents, to sue for, recover, and receive the whole or such part or parts of their respective debts, as shall remain due and unpaid at the time of such breach of default happening, in like manner as they respectively might have done, if these presents had not been made. PROVIDED also, and it is hereby further declared and agreed by and between the several parties hereto, that in case any creditor or creditors of the said (*debtor*). [*or debtors*, or any or either of them,] or the executors or administrators of any creditor or creditors, (except only creditors

Copartners.

(1) If there be two or more debtors in copartnership, add, as *ante*, No. IV. (A), p. 469, n. (1).

being under the disabilities hereinbefore mentioned, or who shall have been compounded with, pursuant to the powers hereinbefore contained) shall for the space of calendar months next after notice for that purpose given to him or them by the said trustees or trustee, refuse or neglect to execute or accede to these presents, the said creditor or creditors so refusing or neglecting, his, her, their executors or administrators, shall be excluded from all benefit under the trusts hereof, and the said (*debtor*) [*or debtors* respectively,] shall be entitled to stand in the place of such creditor or creditors respectively, and have the same or like benefit under the said trusts, as the said creditor or respective creditors, his, her, or their executors or administrators would have been entitled to, in case he or they had executed these presents; save only and except that the provision last hereinbefore contained shall not extend to any creditor or creditors who shall be resident abroad, and the amount of whose debt or debts shall be retained or appropriated in the manner hereinbefore directed or authorised concerning the same, unless

calendar months' notice shall be given to him or them as last aforesaid. PROVIDED also, that it shall be lawful for the trustees or trustee for the time being, to admit any such creditor or creditors to execute these presents or accede to the trusts hereof, after the expiration of the time aforesaid, for any cause which to such trustees or trustee shall appear reasonable, save only that no person or persons shall be entitled to be so admitted a cre-

DEBTOR
AND
CREDITOR.

Trusts of Money.
(Concise Form.)

Notice of debts
to be given to
trustees.

**DEBTOR
AND
CREDITOR.**

*Trusts of Money.
(Concise Form.)*

Debts omitted
in schedule may
be discharged.

Trustees may
convene cre-
ditors for their
direction.

ditor or creditors, unless notice shall have been given by him or them, of his or their debt or debts to the said trustees or trustee, before a final dividend shall have been made of the property of the said (*debtor*) [*or debtors*] under the trusts hereinbefore declared; and that no person or persons shall be admitted a creditor or creditors after any dividend shall have been made under the said trusts, but upon the terms only of his or their not calling for any abatement of, or otherwise disturbing any dividend which shall have been made of the said trust property, prior to the time of such notice having been given of his or their debt or debts (1). PROVIDED also, that if any debt or debts intended to be satisfied under or in pursuance of these presents, shall have been omitted at the time of the execution hereof to be inserted in the schedule hereunder written, the said trustees or trustee for the time being, in case they or he shall think fit, (but not otherwise) shall or may, with the consent of the said (*debtor*) [*or debtors*] by and out of the trust monies aforesaid, pay off and discharge the same, in like manner as if such debt or debts had been so inserted. PROVIDED also, that in case any doubt or question shall arise in or concerning the management of the affairs of the said (*debtor*) [*or (debtors)*], or any or either of them] or the aforesaid trusts, which is

Copartners.

(1) If there be two or more debtors in copartnership, add here, as *ante*, No. IV. (A), p. 474, n. (1).

not expressly or distinctly provided for by these presents, or in case the said trustees or trustee for the time being shall not be able to agree upon the proper mode of conducting or executing the same, then and in every such case the said trustees or trustee shall or may call a meeting of the creditors of the said (*debtor*) [*or debtors*] by fourteen days' notice in the London Gazette, and submit such doubt or question to the creditors who shall be present at such meeting, and the determination of the major part in number and value of the said creditors shall be conclusive upon them and other the said creditors parties hereto, and the same shall be managed and executed accordingly (1). PROVIDED also that all acts, deeds, matters, and things which shall or may be done or determined upon by the major part in number of the trustees for the time being of these presents (not at a general meeting of creditors), shall be equally valid and binding, as well upon the others of the said trustees, as also upon all and every the parties hereto of the third part, in like manner as if the whole of the said trustees had been present at and joined in the same. PROVIDED further, and it is hereby also agreed and declared by and between the parties to these presents, that in case the said (*trustees*) or any or either of them, shall happen to depart this life, or be desirous to

DEBTOR
AND
CREDITOR.

Trusts of Money.
(Concise Form.)

Acts of the
major part of
the trustees to
be valid.

Power of ap-
pointing new
trustees in case
of death, &c.

(1) Or such doubts may be determined by the opinion of counsel, in which case say, as *ante*, No. IV. (A), p. 478, n. (1).

Doubts to be
determined by
counsel.

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Concise Form.)*

resign or be discharged from the trusts in him or them reposed, or shall be about to leave the United Kingdom and reside abroad, or shall otherwise become incapable to act in the said trusts, before the same shall be fully executed, it shall be lawful for the major part in value of the creditors entitled to the benefit of the trusts of these presents, who shall be present at any meeting or meetings to be convened by fourteen days' notice in the London Gazette, in the manner aforesaid, to nominate and appoint some other fit person or persons, whether a creditor or creditors of the said (*debtor*) [*or debtors, or of either of them*] or not, to be a trustee or trustees for the purposes of these presents, in the room of him or them so dying, desiring to resign, or going to reside abroad, or becoming incapable to act as aforesaid; and in every such case, all and singular said trust estates, property, and effects, (or so much thereof as shall remain unsold, undisposed of, or unapplied, in pursuance hereof,) shall be conveyed, assigned, and assured, so and in such manner as that the same may be legally and effectually vested in the surviving, continuing, or only acting trustees or trustee, and such new trustees or trustee, or in such new trustees only, as the case may require, for and upon the several trusts, intents, and purposes hereinbefore declared or expressed concerning the same, or such of them as shall be then subsisting or capable of taking effect; and which said new trustee or trustees shall thenceforth have the same powers and authorities in all things as

by virtue of these presents were vested in the trustee or trustees in whose room he or they shall have been so appointed; and he or they, together with the surviving or continuing trustee or trustees (if any) shall also have full power to settle, adjust, and allow, or disallow, the accounts of the trustees or trustee so dying, desiring to be discharged, becoming incapable to act, or going to reside abroad; and whose determination in respect thereof shall be as final and conclusive upon all persons entitled to any benefit under or by virtue of these presents, as if such new trustee or trustees had been originally appointed a trustee or trustees for the same purpose by these presents. PROVIDED (1) also, and it is hereby agreed and declared, that neither the trustees hereby appointed, nor any other trustees or trustee for the time being of the said trust estate, shall be charged or responsible for any more of the aforesaid trust money or property than they shall respectively actually receive, notwithstanding they or he shall join in any receipt or receipts for the sake of regularity or conformity; and, that no one of them shall be answerable or accountable for the other or others of them, nor for his or their acts or defaults; nor for any banker, broker, or other person with whom, or in whose hands, all or any of the said trust monies or property may be deposited or placed for safe custody, or otherwise

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Concise Form.)*

Trustees not to
be answerable
for each other.

(1) See notes to No. IV. (A), *ante*, p. 482.

Trustees'
expenses.

DEBTOR
AND
CREDITOR.

*Trusts of Money.
(Concise Form.)*

Trustees may
retain their ex-
penses.

Covenant by
creditors to
indemnify
trustees.

in the execution of the aforesaid trusts; nor for the rise, fall, or deficiency of or in any stock, funds, or other securities, in or upon which the same or any part thereof may be invested; nor for any agent, attorney, or other person to be employed by him or them in the execution or management of the aforesaid trusts, nor for any other loss which may happen to the said trust property, otherwise than by or through his or their own wilful neglect or default. [AND also that every of the said trustees shall or may, out of the monies which shall come to his hands, reimburse and retain to and for himself, and allow or pay to his or their co-trustee or co-trustees, all costs, charges, damages, and expenses, (to be reckoned as between attorney and client) and fees to counsel or others, for advice, which he or they may expend, disburse, or be put unto, in the execution of, or relation to the said trusts (1).] AND each and every of the creditors, parties to these presents of the third part, severally and apart from the others of them, doth hereby for himself and herself respectively, and his and her heirs, executors, administrators, partners, and assigns, covenant, promise, and agree with and to the said (*trustees*) and each of them, and the executors and administrators of each of them, and with and to all and every other the trustees or trustee for the

Salts.

(1) See *ante*, p. 184, n. (1); and if any action, &c. be depending, or likely to arise, see *ante*, p. 492, rider (B).

time being of the said trust estates, and his and their executors and administrators, that if they the said trustees, or any or either of them, shall, at any time or times, pay or sustain any loss, costs, damages, or expenses, in the execution of the trusts of these presents, or in relation thereto (and which cannot or shall not be retained by them or him out of the said trust estate), they and each of them the said parties hereto of the third part, their and his executors, administrators, partners, or assigns, shall and will answer and pay to such trustees or trustee, and their and his executors or administrators, a due and just part or share of such loss, costs, damages, and expenses, according and in proportion to the debt or debts due to him or her respectively, as compared with the full amount of the debts owing to themselves and other of the said creditors parties hereto (2). IN WITNESS, &c.

DEBTOR
AND
CREDITOR.

Trusts of Money.
(Concise Form.)

(1) If the debtor be now, or may probably hereafter be privileged, see *ante*, p. 494, rider (C), and *ante*, Vol. V. p. 232. Privilege.

(2) If leasehold premises are assigned by a separate deed, here may be added a covenant to indemnify the debtor against the rents, &c. of the lease, as *post*, p. 548, n. (1). Leaseholds.

DEBTOR
AND
CREDITOR.

*Assignment of
Leaseholds
for Sale.*

No. VI.

*An Assignment of Leasehold Premises to Trustees
in Trust for Creditors.*

Variations *where there are two or more Debtors in Co-
partnership.*

Other Variations as in Margin below (1).

Parties. **THIS** INDENTURE, of parts, made the
 day of [in the year of the reign, &c.
 and] in the year of our Lord
BETWEEN (*the debtor*) [*or debtors*] of, &c. [co-
partners in trade (2)] of the first part (3), (*the*

Brevity. (1) See also notes, &c. to Vol. III. No. LXX. p. 128, *et seq.*
and variations, *post*, No. VIII.

Copartnership. (2) Such parts of the deed as relate to debtors in copartner-
ship, and are too trifling to be subjoined as variations, are in-
cluded within brackets.

Licence. (3) If the debtor be restrained by his lease from assigning
without licence, the lessor may be made a party for the purpose
of assenting to the assignment, in which case make him of the
second part.

trustees) of, &c. (being respectively creditors of the said (*debtor*) and also trustees named and appointed on behalf of themselves and other the creditors of the said (*debtor*) for the purposes hereinafter expressed) of the second part, and the several other persons, creditors also of the said (*debtor*) [*or debtors*] who by themselves or their respective attornies, have executed or shall hereafter execute these presents, of the third part. WHEREAS by indenture of demise or lease, bearing date on or about the day of , which was in the year , and made or expressed to be made between A. B. (*the lessor of the premises*) of the one part, and the said (*debtor*) [*or as the case may be*] of the other part, the said A. B. demised and leased unto the said (*debtor*) his [*or debtors, their*] executors, administrators, and assigns, ALL, &c. (1). To HOLD the same, with the appurtenances, unto the said (*debtor*) his [*or debtors, their*] executors, administrators, and assigns, from the day of then last past, for the term or period of years, to be thence next ensuing, under and subject to the yearly rent of , and the several covenants, provisos, and agreements therein contained, which

DEBTOR
AND
CREDITOR.

*Assignment of
Leaseholds
for Creditors.*

Recital of lease.

(1) Insert here an accurate description of the premises from the lease, or refer to a description of them in the operative part of the assignment, as,

“ All and every the messuages or tenements, piece or parcel of ground and other the premises therein and hereinafter particularly described,” and see *post*, p. 536.

DEBTOR
AND
CREDITOR.

*Assignment of
Leaseholds
for Creditors.*

Recital of
personalty.

on the part of the said (*debtor*) his [*or debtors, their*] executors, administrators, and assigns, is or are thereby required to be paid, performed, or observed respectively, [as in and by the said indenture of lease, reference being thereunto had, will more fully appear (1).] [AND WHEREAS the

Debtor an
assignee.

(1) If the debtor be assignee of the premises, recite here the assignment or demise to him,

“AND WHEREAS by divers mesne assignments and other acts in the law, and particularly by a certain indenture of assignment bearing date on or about the day of , in the year , and made or expressed to be made between A. B. of, &c. of the one part, and the said (*debtor*) of the other part, the said piece or parcel of ground, messuages or tenements, erections, buildings, and other the premises comprised in and demised by the said indenture of lease, of the day of , were assigned to, and are now vested in the said (*debtor*) for all the then and now residue of the said term of years, subject to the rents, covenants, and agreements, on the tenant, lessee, or assignee's part, to be paid, observed, and performed, for or in respect of the same premises.”

Debtor an
under-lessee.

If the debtor be an under-lessee of the premises, say,

“WHEREAS by an indenture of demise or lease bearing date on or about the day of , and made or expressed to be made between A. B. of the one part, and the said (*debtor*) of the other part, the said piece or parcel of ground, messuage or tenement, and premises were demised to and are now vested in the said (*debtor*) for the term of years, from the day of , at the yearly rent of £ , and under and subject to the covenants and agreements therein contained on the part of the said (*debtor*) his executors, administrators, and assigns, to be paid, performed, and observed.”

said (*debtor*) is [*or debtors* are, as well jointly as separately] also entitled to various outstanding debts and sums of money, and possessed of other personal property particularly mentioned (or intended so to be) in the schedule hereunder written, marked with the letter A.] AND WHEREAS the said (*debtor*) is [*or debtors* are in like manner] indebted to the several persons mentioned in the schedule hereunder written, marked with the letter B., in the several sums of money set opposite to their respective names therein, and being unable at present to pay the whole amount of his said debts, hath agreed to assign the said messuage and premises unto the said (*trustees*) in trust to pay and satisfy the same in the manner hereinafter expressed. Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, [and for and in consideration of the sum of ten shillings of lawful current money of England, to the said (*debtor*) [*or debtors*] in hand well and truly paid by the said (*trustees*) at or immediately before the sealing and delivery of these presents,

DEBTOR
AND
CREDITOR.

*Assignment of
Leaseholds
for Creditors.*

Recital of debts.

WITNESS,
that in consi-
deration, &c.

If the assignment be made by licence of the lessor, and he be not a party, recite here, Licence.

“AND WHEREAS the said (*debtor*) has obtained from the said (*lessor*) a full licence and authority in writing under his hand, bearing date, &c. empowering him to assign the said premises in the manner hereinafter expressed, which said licence is or is intended to be annexed unto or indorsed upon these presents.”

DEBTOR
AND
CREDITOR.

*Assignment of
Leaseholds
for Creditors.*

The debtor
assigns.
Leaseholds.

(the receipt whereof is hereby acknowledged,]
HE the said (*debtor*)(1) HATH bargained, sold,
assigned, transferred, and set over, and by
these presents BOTH bargain, sell, assign, trans-
fer, and set over, unto the said (*trustees*) their
executors, administrators, and assigns, ALL (2)

Licence.

(1) If the assignment be by the licence of the lessor, say,

“By and with the privity and consent of the said (*lessor*)
as appears by the said licence for that purpose hereunto an-
nexed, or hereupon indorsed, or so intended to be, as afore-
said.”

Copartners.

If there be two or more debtors in copartnership, to whom
the premises jointly belong, say,

“THEY the said (*debtors*) HAVE, and each of them
HATH granted, bargained, sold, assigned, transferred, and
set over, and by these presents DO, and each of them BOTH
grant, bargain, sell, assign, transfer, and set over unto the
said (*trustees*) their executors, administrators, and assigns,”
&c. (*as above.*)

Parcels.

(2) If any material variation, by reason of new erections or
buildings, or otherwise, have taken place in the description of
the premises since their demise or assignment to the debtor, set
them out according to their present description, adding,

“Being the several messuages or tenements, piece or
parcel of ground and premises comprised in the herein-
before in part recited indenture of lease, of the
day of as the same have been since varied or
altered by new erections or buildings since built thereon,”
(*or as the case may be.*)

Debtor an
assignee.

If the debtor be an assignee only of the premises, they may be
described, with reference to such assignment, as,

“All and singular the messuages or tenements and pre-
mises comprised in, and mentioned to be assigned by the
hereinbefore in part recited indenture of assignment, of the
day of .”

those the said several messuages or tenements,
 pieces or parcels of ground, and all and singular
 other the premises comprised in and expressed to
 be demised by the said hereinbefore in part re-
 cited indenture of lease, of the day of
 as hereinbefore is mentioned, with all and
 every the rights, members, easements, and ap-
 purtenances to the same premises belonging or
 appertaining, or therewith or with any part there-
 of, now or usually occupied or enjoyed; together
 with the said in part recited indenture of lease,
 and all benefit and advantage of the same, and
 [of all and every the covenants, clauses, pro-
 visos, and agreements therein contained, which on
 the part of the lessor or landlord of the said pre-
 mises are to be performed or observed.] AND
 all the [joint and several] estate, right, title, in-
 terest, term, or number of years now to come and
 unexpired, property, claim, and demand whatso-
 ever, both at law and in equity, of him the said
 (*debtor*) [or of them the said *debtors*] in, to, or
 concerning the same premises, or any part thereof,
 under or by virtue of the said indenture of lease,
 or otherwise howsoever (1). TO HAVE AND TO
 HOLD the messuages or tenements, pieces or par-
 cels of ground, and all and singular other the pre-
 mises hereby assigned, or otherwise assured, or

DEBTOR
 AND
 CREDITOR.

*Assignment of
 Leaseholds
 for Creditors.*

TO HOLD to the
 trustees for the
 residue of the
 term.

(1) If a policy of assurance, made on the premises, is to be assigned, such assignment may be added here; which see *post*, p. 550, rider (A). Policy.

**DEBTOR
AND
CREDITOR.**

*Assignment of
Leaseholds
for Creditors.*

Subject to the
rent and cove-
nants in the
lease.

intended so to be, with their and every of their respective rights, members, easements, and appurtenances, unto them the said (*trustees*) their executors, administrators, and assigns, from henceforth for and during all the residue and remainder of the said term or period of years, in and by the said in part recited indenture of lease granted, [and so assigned to or otherwise vested in the said (*debtor*) [*or them the said debtors*, as aforesaid,] which is or may be yet to come and unexpired by effluxion and computation of time, and as beneficially to all intents and purposes whatsoever as he the said (*debtor*) now holds or enjoys, [*or they the said debtors* now hold or enjoy,] or at or immediately before the sealing and delivery of these presents, held or enjoyed the same, and as if the names of the said (*trustees*) had been inserted in the said in part recited indenture of lease [or of assignment] instead of the name of him [*or them*] the said (*debtor*) [*or debtors*.] [(1) SUBJECT only to the payment of the yearly rent in or by the same indenture of lease reserved, or such part thereof, as by the tenant or lessee of the said premises, is or are to be paid for or in respect thereof, from and after the day of , and to the performance and observance of the several covenants, provisos, and agreements, therein contained, which on his or

Brevity.

(1) The parts here within brackets are provided for by the rules of law, and if brevity be desired, may be omitted.

their part and behalf, are or ought to be henceforth performed and observed, from and after the date of these presents ;] But nevertheless UPON THE TRUSTS, and to and for the ends, intents, and purposes, and under and subject to the powers, provisos, declarations, and agreements hereinafter declared or expressed of or concerning the same.

DEBTOR
AND
CREDITOR.

*Assignment of
Leaseholds
for Creditors.*

AND it is hereby declared and agreed by and between all and every the parties to these presents, that they the said (*trustees*) and the survivor of them, and the executors and administrators of such survivor, and their or his assigns, shall and will stand possessed of and interested in the said messuages or tenements, and other the premises hereinbefore assigned or otherwise assured, or intended so to be, UPON TRUST that they or he do and shall immediately upon the execution of these presents, or at any time or times hereafter, when and as they or he shall think fit, at or upon their or his own proper discretion and authority, without any further consent or concurrence of the said (*debtor*) [*or debtors*, or either of them] his [*or their*] executors or administrators than is hereby given or expressed, sell and dispose of, either by private contract or public auction, and either absolutely or by way of mortgage, or otherwise, and either together or in separate parcels, and at one time or different times, as they or he shall think best, ALL and singular the same messuages or tenements, and premises, or any part thereof, with their and every of their appurtenances to any person or persons willing to become a purchaser or purchasers,

The trustees to
stand possessed
of the premises
upon trust to
sell, &c.

DEBTOR
AND
CREDITOR.

*Assignment of
Leaseholds
for Creditors.*

Contracts entered into by trustees to be valid.

or mortgagee or mortgagees of the same, for such price or prices, or sum or sums of money as to them or him shall seem reasonable, and do and shall for the perfecting any such sale or mortgage, or sales or mortgages, sign, seal, deliver, and execute all and every such assignments, conveyances, and assurances, and do and perform such other acts and things whatsoever, as may be requisite for that purpose, or as any purchaser or purchasers, or mortgagee or mortgagees thereof shall reasonably direct or require; and in the mean time, and until such sale or sales shall be made or take place, UPON TRUST that they the said (*trustees*) and the survivors and survivor of them, and the executors or administrators of such survivor and their or his assigns, do and shall or lawfully may enter into and upon all and singular the same messuages, or tenements and premises, and receive and take the rents, issues, and growing proceeds thereof, for the ends, intents, and purposes hereinafter expressed concerning the same. [AND (1) it is hereby agreed and declared by and between all and every the parties to these presents, and particularly by the said (*debtor*) [*or debtors*] that all and singular the contracts and agreements, sales, mortgages, dispositions, assignments, assurances, acts, deeds, matters, and things whatsoever, which shall or may be entered into,

Brevity.

(1) The words here bracketed may be omitted, where great brevity is desirable.

made, done, or executed by the said (*trustees*) or the survivor of them, or the executors or administrators of such survivor, or their or his assigns, relative to or in respect of the messuages or tenements and premises hereby assigned, or otherwise assured as aforesaid, or intended so to be, or any part thereof, shall be as valid and effectual, to all intents and purposes whatsoever, as if he the said (*debtor*) his [*or* they the said *debtors*, their respective] executors or administrators, had entered into, made, done, executed, or otherwise joined or concurred in the same respectively, and that the person or persons to whom the said messuages, or tenements and premises, or any of them shall or may be assigned, or otherwise assured, and their respective executors, administrators, and assigns shall have, hold, occupy, possess, and enjoy the same against the said (*debtor*) his [*or debtors*, their] executors, administrators, and assigns, and all and every person or persons lawfully or rightfully claiming or possessing any estate, right, title, or interest therein or thereto, from, through, under, or in trust for him or them, in like and as ample, secure, and beneficial a manner as if he the said (*debtor*) his [*or* they the said *debtors*, their] executors or administrators, had executed or otherwise joined or concurred in, or assented to the assignments or assurances thereof.]

DEBTOR
AND
CREDITOR.

*Assignment of
Leaseholds
for Creditors.*

AND it is hereby further agreed and declared that the receipt or receipts of the said (*trustees*) or of the survivor of them, or of the executors or administrators of such survivor, or their or his assigns,

Receipts of
trustees a good
discharge.

DEBTOR
AND
CREDITOR.

*Assignment of
Leaseholds
for Creditors.*

or of any or either of them who shall be the only acting trustees or trustee for the time being in the trusts aforesaid, shall from time to time and at all times be a good and sufficient discharge, and good and sufficient discharges to all and every person and persons to him or them paying any purchase, mortgage, or other consideration money, or rents, or profits, of, for, or concerning the said messuages, or tenements and premises, or any part thereof, and to the executors, administrators, and assigns, of every such person and persons, for so much money as shall therein be acknowledged to be received, [and (1) that he, they, or any of them, so paying the same, his, her, or their executors or administrators, shall not afterwards be answerable or accountable for the loss, misapplication, or nonapplication thereof, or of any part thereof, nor be in any manner obliged to inquire into the authority, necessity, or expediency of or for any sale, mortgage, or other disposition of the said premises, or any part thereof, or whether the same be or be not more than sufficient to answer and satisfy the trusts aforesaid, nor be affected or prejudiced by any notice he or they may have of the same being unnecessary or inexpedient, but every such person and persons, his, her, and their executors and administrators, shall be for ever thereafter freed and discharged from all claims and questions in respect of every or any

Brevity.

(1) See *ante*, p. 538, n. (1).

of the said monies, matters, or things aforesaid, by or from the said (*debtor*) his [*or the said debtors, their respective*] executors or administrators, and all and every person or persons claiming or possessing any estate or interest from, under, or in trust for him [*or them, or either of them*], any of the trusts hereinbefore declared, or the schedule of debts hereunto annexed, in any wise notwithstanding.] AND it is hereby further declared and agreed by and between the said several persons parties hereto, that they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, and their and his assigns, and other the trustees or trustee for the time being of the said trust property, shall stand and be possessed of and interested in all and singular the sum and sums of money to arise or be produced by any sale, mortgage, or other disposition which shall be made of all or any of the leasehold estates of the said (*debtor*) (1) under or by virtue of these presents, and of and in the rents, issues, and profits thereof in the mean time, [*and also of and in all debts and other monies which shall be gotten in or arise from his said personal estate and effects,*]

DEBTOR
AND
CREDITOR.

*Assignment of
Leaseholds
for Creditors.*

The trustees to
stand possessed
of the money
to arise by sale,
&c.

(1) If there be two or more debtors in copartnership, say, Copartners.

“The leasehold estate and effects of the said (*debtors*) as well on their partnership as on their respective separate accounts.”

DEBTOR
AND
CREDITOR.

*Assignment of
Leaseholds
for Creditors.*

Upon trust, &c.
Covenant by
debtor that
lease is valid.

UPON THE TRUSTS, and to and for the ends, intents, and purposes “following (that is to say) UPON TRUST,” &c. (1). AND the said (*debtor*) for himself (2), his heirs, executors, and administrators, doth covenant, promise, and agree with and to the said (*trustees*) their executors, administrators, and assigns, and other the trustees or trustee for the time being, and with and to each and every of them by these presents, in the manner following,

Copartners.

(1) If there be two or more debtors in copartnership, see the trusts, *post*, No. VIII. p. 578.

Trusts of money.

If the trusts of the money are intended to be inserted in the deed of assignment, add the trusts here, as *ante*, No. IV. (A), p. 443, marg. *, for a full form, and No. V. (A), p. 509, marg. *, *et seq.* for a more concise one.

But if it be intended that they shall be inserted in a separate instrument, (and see *ante*, p. 421, n. (25), p. 439, n. (1),) instead of the words within inverted commas, say,

“In or by a certain indenture already prepared and engrossed, bearing or intended to bear even date with these presents, and made or intended to be made between the same parties as are parties to these presents, and referred hereunto as the deed or instrument, whereby the trusts and purposes of the said monies are or were then intended to be declared or expressed.”

Copartners.

(2) If there be debtors copartners, say,

“And the said (*debtors*) for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, but not the one for the other of them, or for the acts and deeds, or the executors or administrators of the other of them, but each for himself only, and his own proper acts and deeds, and executors and administrators, do, and each of them doth covenant,” &c. (*as above.*)

(that is to say) that for and notwithstanding any act, deed, matter, or thing whatsoever by him the said (*debtor*) [or either of them the said *debtors*] made, done, committed, executed, or knowingly occasioned or suffered to the contrary, the said hereinbefore in part recited indenture of lease (1), mentioned to bear date the day of , is at the time of the sealing and delivery of these presents a good, valid, and effectual lease both at law and in equity, of and for the premises thereby expressed to be demised [or and assigned respectively] and hereby assigned, or otherwise assured, or intended so to be, and the term of years thereby granted in full effect, and in no wise forfeited, surrendered, assigned, determined, become void or voidable, or otherwise prejudicially affected (save only by effluxion of time) in any manner howsoever (2). AND also, that for and notwithstanding any such deed, matter, or thing, as afore-

DEBTOR
AND
CREDITOR.

*Assignment of
Leaseholds
for Creditors.*

That he hath
right to assign.

(1) If the debtor is himself an assignee of the premises, say,

Debtor an
assignee.

“ Indentures of lease and assignment, mentioned to bear date the day of , and the day of , respectively are, and each of them is, good, valid, subsisting, and effectual both at law and in equity,” &c.

(2) In an assignment of a lease to a purchaser, it is proper in some cases to insert a covenant on the part of the lessee, that the rent, &c. has been paid up to the last quarter; but in a conveyance in trust for the payment of debts, this cannot be expected, such arrears, if any, being a part of his debts, and the trust estate being directed to be first applied in the satisfaction of such demands.

Payment of
rent, &c.

DEBTOR
AND
CREDITOR.

*Assignment of
Leaseholds
for Creditors.*

Quiet enjoy-
ment.

said, he the said (*debtor*) (1) hath in himself full power and lawful and absolute authority to grant, bargain, sell, assign, and assure the same messuages or tenements, pieces or parcels of ground, and all and singular other the premises, with their respective rights, members, and appurtenances, unto the said (*trustees*) their executors, administrators, and assigns, for and during all the residue or remainder which is now to come and unexpired by computation of time, of or in the said term of years, upon the trusts and to and for the ends, intents, and purposes hereinbefore declared or expressed concerning the same, and according to the true intent and meaning of these presents. AND further, that it shall be lawful for them the said (*trustees*) or any or either of them, or other the trustees or trustee for the time being of the said trust estate, from time to time, and at all times hereafter during the residue or remainder now to come and unexpired of the said term of years by the said in part recited indenture of lease granted as aforesaid, peaceably and quietly to enter into and upon, and have, hold, occupy, possess, and enjoy the same premises, with their and every of their appurte-

Copartners.

(1) If there be two or more debtors in copartnership, say,
“And also that for and notwithstanding any such act, deed, matter, or thing as aforesaid, they the said (*debtors*) each covenanting separately as aforesaid, have in themselves, or one of them hath in himself, full power,” &c. (*as above.*)

nances, and take, receive, and retain the rents, issues, and profits thereof, for and upon the trusts, intents, and purposes aforesaid, and also for any purchaser or purchasers, mortgagee or mortgagees, or other person or persons to whom the same messuages, or tenements and premises, or any part thereof, may be assigned or assured, by virtue or in pursuance of the trusts hereof, to enter into and upon, and hold and enjoy the same, to and for his and their own use and benefit, freed and discharged therefrom, without any manner of hinderance, interruption, disturbance, claim, or demand whatsoever, by or from the said (*debtor*) his [*or the said debtors, their respective*] executors or administrators, or any person or persons now or hereafter having or possessing any estate, right, title, charge, or interest, at law or in equity, in, to, out of, or respecting the same, or any part thereof, from, through, under, or in trust for him, them, or any of them. AND moreover, that he the said (*debtor*)(1) and all and every person or persons claiming or having any such estate, right, title, or interest as lastly aforesaid,] shall and will from time to time, and at all times hereafter, at the reasonable request, and at the costs and expense of the per-

DEBTOR
AND
CREDITOR.

*Assignment of
Leaseholds
for Creditors.*

Further as-
surance.

(1) If there be two or more debtors in copartnership, say, Copartners.

“AND moreover that they the said (*debtors*) and each of them, their, and each of their executors and administrators, and all and every person or persons,” &c. (*as above.*)

DEBTOR
AND
CREDITOR.

*Assignment of
Leaseholds
for Creditors.*

son or persons requiring the same, his or their executors, administrators, or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, assurances, matters, and things whatsoever, for the further, better, more perfectly, and absolutely, or satisfactorily assigning, confirming, and assuring all and singular the same messuages, or tenements and premises, with their rights, members, easements, and appurtenances, unto them or him the said trustees or trustee, for all the residue or remainder which shall be then to come and unexpired of the said term, upon and for the trusts, intents, and purposes hereby expressed or intended concerning the same, as they the said trustees or trustee, or their or his assigns, or their or any of their counsel in the law shall advise or require (1). IN WITNESS, &c.

Indemnity to
debtor.

(1) If the trusts of the money to arise by sale, &c. be declared by the deed of assignment, (and see *ante*, p. 544, n. (1),) here may be added (although the law will imply it) a covenant to indemnify the debtor against the rent and covenants of the lease; but if the trusts be declared by a separate deed, this covenant will be more properly inserted in such latter deed: the form may be as follows,

“AND the said (*trustees*) for themselves severally and respectively, and for their several and respective executors and administrators, and also (by and with the privity, consent, and direction of the several parties hereto of the third part) for and on the part of every of them the said parties hereto of the third part, and their respective executors, ad-

ministrators, and partners, do and doth covenant, promise, and agree with and to the said (*debtor*) [*or each of them the said debtors*] his [*or their respective*] executors and administrators, that they the said (*trustees*) and the parties hereto of the third part, their respective executors, administrators, or partners, or some or one of them, shall and will, from time to time, and at all times hereafter, during the subsistence of the trusts of these presents, now to come and unexpired, well and truly pay or cause to be paid the said yearly rent of £ at such times and in such manner as the same, in and by the said in part recited indenture of lease is reserved and made payable, and henceforth to become due [together with all taxes incident to and chargeable upon the said premises, or the lessee or tenant in respect thereof,] and also well and truly observe and perform, or cause to be observed and performed, the covenants, provisos, and agreements in the same indenture of lease contained, which he the said (*debtor*) his [*or they the said debtors, their*] executors or administrators, from henceforth are or may be liable to pay, observe, or perform respectively, in relation to the messuage and premises hereby assigned or otherwise assured as aforesaid; and save, defend, and keep harmless, or cause to be saved, defended, and kept harmless and indemnified him the said (*debtor*) [*or them the said debtors respectively*] his [*or their*] executors and administrators, of, from, and against the same, and all loss, costs, charges, damages, and expenses, to be occasioned or incurred by or by reason of any nonpayment, or breach, nonobservance, or nonperformance of the same respectively."

DEBTOR
AND
CREDITOR.

*Assignment of
Leaseholds
for Creditors.*

**DEBTOR
AND
CREDITOR.**

*Assignment of
Leaseholds
for Creditors.*

(A). *Assignment of Policy of Assurance against Fire* (1).
See *ante*, p. 586.

**FURTHER
WITNESS,
Assignment of
Fire policy.**

“AND WHEREAS the messuages or tenements, and other the buildings, hereinbefore assigned, are insured against loss by fire in the insurance office, as hereinafter is mentioned; and it has been agreed that the benefit of the said insurance should be assigned to the said (*trustees*) for and upon the like trusts and purposes as hereinafter are expressed. NOW THEREFORE THIS INDENTURE FURTHER WITNESSETH, that for the considerations and purposes aforesaid, the said (*debtor*) HATH granted, bargained, sold, assigned, transferred, and set over, and by these presents DOTH grant, bargain, sell, assign, transfer, set over, and confirm unto the said (*trustees*) their executors, administrators, and assigns, ALL that deed poll or policy of insurance, bearing date the day of , which was in the year , and numbered , and being, or purporting to be, under the hands and seals of three of the directors of the insurance office or company, by which said policy the messuages or tenements and buildings mentioned or intended to be hereby assigned, are, or are expressed to be insured against loss or damage by fire, in or for the sum of £ for the term of years from the date thereof, To HAVE, receive, and take the said deed poll or policy of insurance hereby assigned or otherwise assured, or intended so to be, and all and every sum and sums of money which shall or may become due and payable thereupon or by virtue thereof, and all other benefit and advantage whatsoever which shall or may accrue from or in respect of the same, unto and by them the said (*trustees*) their executors, administrators, and assigns. But never-

Life policy.

(1) If a life policy be assigned, see *post*, No. X. rider (A).

theless upon such and the same or the like trusts, and such and the same or the like ends, intents, and purposes, as are by these presents expressed or referred unto, as to or concerning the messuages and premises hereinbefore assigned or otherwise assured to them the said (*trustees*) or intended so to be, and of the money to arise therefrom, or as nearly thereto as may be. And the said (*debtor*) doth hereby nominate, constitute, and appoint the said (*trustees*) and each of them jointly and severally, and the executors, administrators, and assigns of the survivor of him, the true and lawful attorney and attorneys of him the said (*debtor*) in their or his name or names, or in the name of him the said (*debtor*) his executors or administrators, to demand, recover, and receive, and sign, and give good, full, and sufficient discharges for all such sum and sums of money as aforesaid, in as full and ample a manner in all things as he the said (*debtor*) could or might have done if these presents had not been made."

DEBTOR
AND
CREDITOR.

*Assignment of
Leaseholds
for Creditors.*

Letter of
attorney.

DEBTOR
AND
CREDITOR.

*Assignment
of Stock in
Trade, &c.
for Creditors.*

No. VII.

Assignment of Stock in Trade, Debts, &c. by Debtor to Trustees, in Trust for themselves and the other Creditors of the Debtor (1).

Variations where a Lease of the Premises is also assigned.

THIS INDENTURE TRIPARTITE made the

Where assign-
ment an act of
bankruptcy.

(1) An assignment by a debtor, not subject to the bankrupt laws, in trust for his creditors, is valid, even though it be done unknown to them, and be of his whole estate, and although the demands of a particular creditor may, as to all but his proportional part, be thereby defeated; *Inglis v. Grant*, 5 Durn. and E. 530, *Pockstock v. Lyster*, 3 Maul. and Selw, 371; and will not be superseded even by an extent, if subsequent to the assignment; *Rex v. Walson*, 3 Pri. 6; but only by a previous act of bankruptcy when the property of the bankrupt vests in his assignees with relation to the time of the act committed; *Dutton v. Morrison*, 17 Ves. 193, and see *Doe dem. Mitchell*, 2 Maul. and Sel. 446; and therefore every deed of the above kind, although it may not in itself constitute an act of bankruptcy, will be avoided by proof of any other act of bankruptcy previously committed. But if the debtor be subject to the bankrupt laws (as in the above precedent he must be supposed to be), an assignment of his estate and effects for the benefit of his creditors, without the assent of such creditors, will constitute an act of bankruptcy, as being a fraud upon the bankrupt acts, of which the governing principle is an equal distri-

day of _____, in the year, &c. and in the year of _____

DEBTOR
AND
CREDITOR.

*Assignment
of Stock in
Trade, &c.
for Creditors.*

bution amongst all the creditors, *Rust v. Cooper*, Cowp. 629. *Law v. Skinner*, 2 Blac. Rep. 996. *Tappenden et al. v. Burgess*, 4 East, 230; and although he be solvent at the time, it will make no difference; *Kassell v. Simpson*, 1 Bro. Ch. Ca. 99; unless it has been made under circumstances of compulsion; *Reed v. Ayton*, 1 Holt, 503. *Ashbourn v. Hanbury*, *ib.* 575. And if there be creditors of two or more copartners, the dissent of a separate creditor of one of the parties will have the same effect; *Eckhardt v. Wilson*, 8 Durnf. and E. 140; and see *Back v. Gooch*, 4 Campb. 232; and so an assignment of a part only of the effects in contemplation of bankruptcy would, it should seem, constitute that act on the score of fraud, by giving a preference to one creditor to the prejudice of the rest; 3 Wilson, 47, Cowp. 124; *Round v. Byde*, Wats. Cop. 251; *Kettle v. Hammond*, Bul. Nisi P. 40; *Alderson v. Temple*, 4 Burr. 2254; *Harman v. Fisher*, 1 Cowp. 123; with this exception only, that it cannot be set up by those who execute or legally assent to it; *Tappenden v. Burgess*, 4 East, 230; *Bamford v. Baron*, cited 2 Durnf. and E. 594; *Ex parte Whalley*, 1 Smith Rep. 118; *Ex parte Kilner*, 1 Buck. 104. But a conveyance of a part only of his effects to any one or more of his creditors will be good, and not constitute a bankruptcy, if it be a fair and honest transaction, and not done in contemplation of an act of bankruptcy, or with a view to defeat or delay the payment of the just demands of his other creditors; *Linton v. Bartlett*, 3 Wils. 47, Cowp. 124; *Devon v. Watts*, Doug. 86; *Small v. Oudley*, 2 P. Wms. 428; *Jacob v. Shepherd*, cited 2 P. Wms. 430, 431; *Unwin v. Oliver*, cited 1 Burr. 481; *Manton v. Moore*, 7 Durnf. and E. 67; unless the part assigned comprise so nearly the whole of his effects, as that what is omitted is by way of colour only; *Ex parte Ford*, 1 Burr. 477, Cowp. 124; *Compton v. Bedford*, 1 Blac. Rep. 362; *Law v. Skinner*, 2 *ibid.* 996; *Ex parte Richardson*, 14 Ves. jun. 186. Nor will a surrender of *copy-holds*, although fraudulently made, constitute a bankruptcy, this having no tendency to defeat the other creditors, as this species of property is exempt from liability to legal process; and see *Ex parte Cockshot*, 3 Brow. Ch. Rep. 502; see *Burney v. Davison*, 4 Moore, 126; *Burney v. Viner*, *ib.* 322. But it is re-

DEBTOR
AND
CREDITOR.

Assignment
of Stock in
Trade, &c.
for Creditors.

Recital of debts.

Proposal to
assign effects
for payment.

WITNESS,
Debtor assigns.

our Lord . BETWEEN (*the debtor*) (1) of, &c. of the first part, the several other persons whose names are hereunto subscribed and seals affixed as executing parties hereto, being creditors of the said (*debtor*) (or such of them as shall make proof of their debts as hereinafter mentioned) of the second part, and (*trustees*) of, &c. creditors also of the said (*debtor*) and trustees appointed for the purposes hereinafter expressed, of the third part. WHEREAS the said (*debtor*) is indebted unto the several other parties hereto in the sums set opposite to their respective names, or otherwise mentioned in the schedule hereunder written, or hereunto annexed, which, by reason of divers losses and other misfortunes, he is at present unable to pay, and hath therefore proposed and agreed with his said creditors to assign to the said (*trustees*) all and singular the debts, sums of money, goods, chattels, and effects whatsoever, which he is possessed of, or interested in, upon trust to pay and satisfy the same in the manner hereinafter expressed (2). NOW THIS INDENTURE WITNESSETH, that the said (*debtor*) in pursuance of the said agreement, and

quisite, to support a commission, that the act of bankruptcy should be committed in England; if therefore the deed be executed elsewhere, it will not constitute that act: *Inglis v. Grant*, 5 Durnf. and E. 530; *Rust v. Cooper*, Cowp. 629; *Alexander v. Vaughan*, Cowp. 401; *Norden v. James*, Dick. 533.

Copartners.

(1) If there be two or more debtors in copartnership, see next precedent, No. VIII.

Poundage.

(2) If the creditors have agreed to accept of so much in the pound in lieu of the whole of their debts, see *post*, rider (A).

Lease.

If a lease be also assigned, recite it here, as *ante*, p. 633.

in consideration of the licence and release herein-
 after contained, [and also for and in consideration
 of five shillings of lawful money of England to
 him the said (*debtor*) in hand paid by the said
 (*trustees*) at the time of the sealing and delivery
 by them of these presents, the receipt whereof is
 hereby acknowledged,] he the said (*debtor*) HATH
 granted, bargained, sold, assigned, transferred,
 and set over, and by these presents DOTH grant,
 bargain, sell, assign, transfer, and set over, unto
 the said (*trustees*), ALL and singular the debts,
 sums of money, household and other goods, chat-
 tels, wares, merchandizes, stock in trade, and
 other the personal estate and effects whatsoever,
 of him the said (*debtor*) now remaining and being
 in or about the dwelling-house and shop of the
 said (*debtor*) situated at, &c. or at or in any
 other place or places whatsoever, or in the
 hands or custody of any person or persons whom-
 soever, (and which are intended to be set forth
 or mentioned in the schedule hereunto annexed
 or hereunder written) with their and every of
 their appurtenances; and also all and every the
 bills, notes, bonds, and other securities and evi-
 dences whatsoever, of or for the same, or any
 of them, or any part thereof(1); and all the

DEBTOR
 AND
 CREDITOR.

Assignment
 of Stock in
 Trade, &c.
 for Creditors.

Debts and
 effects to trust-
 ees.

(1) If a lease also be assigned, see and add,

Lease.

“AND ALSO,” &c. as *ante*, p. 535.

If part of the effects of the debtor consist of ships and cargoes, Ships, &c.
 add,

“And also all that ship or vessel [or all that moiety or
 one equal half part (the whole into two equal parts being

DEBTOR
AND
CREDITOR.

*Assignment
of Stock in
Trade, &c.
for Creditors.*

To hold.

estate, right, title, interest, claim, and demand whatsoever, of him the said (*debtor*), of, in, to, or out of the same property and premises, and every of them respectively; To HAVE AND TO HOLD the said debts, sums of money, household and other goods, chattels, wares, and merchandise, stock in trade, and other the premises hereinbefore assigned, or otherwise assured or intended so to be, (and whether contained in the schedule

considered as divided) of him the said (*debtor*), of or in all that ship or vessel, (*as the case may be*) called or known by the name of , whereof is master, and now on a voyage to , [or supposed to be on her return from , or now in the port of, &c. (*as the case may be*)] and also all [or of and in all] and every the goods, wares, and merchandise, which now are, or is, or which were, or was sent out, by or on account of the said (*debtor*) or which shall or may be brought home therein on his account, or in which he is, may, or shall be interested, and the produce and proceeds of the same respectively, and all and every sum and sums of money due, or to become due, for or upon the freight of the said ship or vessel, or from or by reason of any assurance or assurances thereof, or of any part of the same, and every other profit, emolument, and advantage whatsoever, to be had or arise from or in respect of the said ship or vessel, cargo or cargoes, and assurance or assurances, or any or either of them respectively, and which said ship or vessel hath been duly registered as by law is required; and of the registry whereof a copy is or is intended to be hereupon endorsed (1).

(1) See 26 Geo. III. c. 60, requiring the registry of ships, and the recital thereof to be inserted in assignments; and see also 1 WILDE'S SUP. No. XXXIX.

hereunto annexed or hereunder written, or not) with all and every the rights, members, and appurtenants to the same respectively belonging, unto them the said (*trustees*), their executors, administrators, and assigns, henceforth and for ever. But, nevertheless, upon the trusts, and to and for the ends, intents, and purposes, and under and subject to the powers, provisos, declarations, and agreements, hereinafter declared or expressed concerning the same, that is to say, UPON trust, and to and for the intent and purpose that they the said (*trustees*) and the survivor of them, and the executors or administrators of the survivor, and their or his assigns, do and shall, with all convenient speed, sell and dispose of either by public auction or private sale, and either in the gross, and by way of wholesale, or in lots or parcels, or in or by way of retail, or otherwise howsoever, at their and his sole discretion, and without any further consent or concurrence of or by the said (*debtor*) his executors or administrators, than hereby is given or expressed, all and singular the said household and other goods, wares, merchandise, and stock in trade, of him the said (*debtor*) at or for the best rates and prices that can, in their or his opinion, be reasonably obtained for the same, or as he or they shall think fit and most for the benefit of themselves and other the said creditors (1). AND it is hereby

DEBTOR
AND
CREDITOR.

*Assignment
of Stock in
Trade, &c.
for Creditors.*

Upon trust to
sell the stock,
&c.

Declaration of
trusts of the
money.

(1) If the debtor is to be allowed to carry on the business under the superintendence of an inspector, say,

Debtor to carry
on the business.

“ But, nevertheless, subject and without prejudice to

DEBTOR
AND
CREDITOR.

*Assignment
of Stock in
Trade, &c.
for Creditors.*

declared and agreed, by and between all and every the several parties to these presents, that

licence or authority hereinafter given to the said (*debtor*) in relation thereto, so long as the same shall or ought to continue to subsist and in force, under or by virtue and according to the true intention and meaning of these presents and of the proviso next hereinafter contained, in or for that behalf or purpose (that is to say), PROVIDED ALWAYS nevertheless, and it is hereby declared and agreed, by and between the several parties hereto of the second and third parts respectively, that it shall be lawful for the said (*debtor*), and he is accordingly hereby authorized and allowed to carry on, conduct, and manage all and every the said trade or business of him the said (*debtor*) as afore-said, and collect, get in, and receive (but not to institute any action, suit, or other legal process or proceeding, for that purpose) all and singular the book and other debts, and sell and dispose of, in or by way of retail, at the usual and accustomed price, and in the manner and according to the usage of the said trade or business of all or any part of the stock in trade and effects hereinbefore assigned, so nevertheless that the same shall be during the pleasure, under the inspection, and subject, from time to time, to the approbation and control of the said (*trustees*) or any two of them, and not farther, longer, or otherwise howsoever. AND he the said (*debtor*) doth hereby, for himself, his heirs, executors, and administrators, covenant and declare, to and with the said (*trustees*) their executors, administrators, and assigns, that he the said (*debtor*) shall and will, from time to time, and at all times during so long as he shall be so authorised or permitted as aforesaid, use and employ his best endeavours to sell and dispose of the said stock in trade, and until sale and disposition thereof advance and promote the increase and prosperity of the said trade, under and subject to the direction and control of them the said (*trustees*) or of any two of them, according to the tenor and true intent and meaning of these presents, and also to collect and

they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of the survivor and their or his assigns, and other the trustees or trustee for the time being, of the said assigned property and premises, shall stand and be possessed of, and interested in, all and singular the sum and sums of money to arise or be produced by any sale or sales, or other disposition which shall be made of all or any part of the said stock in trade, estate, and effects, of the said (*debtor*) and also by or from any debt or debts, or other money or monies which shall be gotten in, recovered, or received, under or by virtue of these presents, UPON TRUST, in the first place (1), to retain and reimburse themselves

DEBTOR
AND
CREDITOR.

Assignment
of Stock in
Trade, &c.
for Creditors.

Trust to pay
expenses.

get in all and every the debts and effects (other than by action or suit as aforesaid) of or belonging to the said co-partnership trade or business. AND moreover shall and will, from time to time, when and so often as any sum or sums of money shall be received, or come to the hands of him the said (*debtor*) to the amount of £ , pay the same into the hands of the said (*trustees*) or of other the trustees or trustee for the time being of these presents, or otherwise, as they or he shall direct, to be paid and distributed unto and amongst the several creditors of him the said (*debtor*), under and according to the directions hereinafter contained concerning the same."

(1) It has been observed in a former note, that in a conveyance of real property for the benefit of creditors, the trusts of the money to arise from sale should be declared in a separate instrument, in order that the title deeds of the estate may not be burthened with matters irrelevant to the title, and that the trustees may retain in their hands the directions as to the application of the money, and which would otherwise be delivered

Trusts of money.

DEBTOR
AND
CREDITOR.

*Assignment
of Stock in
Trade, &c.
for Creditors.*

Rents, &c.

and himself respectively, all costs, charges, and expenses, which shall have been incurred in preparing and executing these presents, or in relation thereto; AND also all such sum or sums of money as shall be requisite for insuring any sum or sums of money which shall be deemed advisable, upon the life of the said (*debtor*) for such term of years or other period as they or he the said trustees or trustee shall in their discretion think fit; AND then in payment and satisfaction of all rents, taxes, necessary repairs, and other outgoings, of or respecting the messuages or premises where the said joint trade is, or for the time being may be, carried on or conducted, and indemnifying him the said (*debtor*) from and against the same; and in insuring the said premises, or the stock in trade, goods, wares, or merchandise therein, from loss or damage by fire; and in payment of salaries and wages to clerks, servants, and agents to be employed in or about the concerns of the said (*debtor*), and the costs, expenses, and disbursements incident to the sale or other disposition of the said stock in trade, goods, or merchandise, and in collecting in, recovering and receiving the debts or

over to the purchasers; but as neither of these reasons are applicable to an assignment of personalties, a separation of the trusts of the money from those of the property is unnecessary.

Other trusts.

More full and additional trusts than those above may be found, if desired, *ante*, pp. 443. 508, marg. *.

Copartners.

And if there be two or more debtors in copartnership, see *post*, No. VIII. and variations to No. IV. (A), *ante*, p. 439, *et seq.* marg. "copartners."

sums owing to him the said (*debtor*) and otherwise in the execution of or relative to the trusts and purposes of these presents ; AND after payment of the same costs, charges, disbursements, and expenses, then and in the next place, UPON TRUST, that they the said trustees and trustee do and shall pay and apply all the residue of the monies to arise by any of the means aforesaid, from time to time, as and when the same shall amount to the sum of three shillings in the pound, in or towards payment or satisfaction of the several debts and demands owing by him the said (*debtor*) to such of his creditors as shall have signed and sealed, or otherwise acceded to, these presents, and made proof of their respective debts upon oath, within the space of two calendar months next after the date hereof, before a master in Chancery, or before a judge or some other magistrate authorised to administer oaths, if thereunto required, until the said debts and demands shall be fully paid and satisfied, without preference or priority (1), or so far as the said monies will extend (2) ; AND from and after full payment and

DEBTOR
AND
CREDITOR.

*Assignment
of Stock in
Trade, &c.
for Creditors.*

Pay debts.

(1) If the debts are to be paid according to legal priority, say, "In manner following (that is to say)," &c. See *ante*, p. 447, n. (1). Order of payment.

(2) Add, if so agreed,

Allowance to
debtor.

"PROVIDED always, that they the said trustees or trustee for the time being, shall or lawfully may, at his or their discretion, from time to time, as and when they or he shall see occasion or think it expedient so to do, by and out of the monies which shall come to their or his hand or hands, under or by virtue of the trusts of these presents, to advance

**DEBTOR
AND
CREDITOR.**

*Assignment
of Stock in
Trade, &c.
for Creditors.*

Letter of
attorney.

satisfaction thereof, THEN UPON TRUST, to pay over the surplus of the said monies, and assign or deliver over such parts of the said stock in trade, goods, wares, and merchandises, as shall not have been sold or disposed of, for the purposes aforesaid, (if any such there be) unto him the said (*debtor*) his executors, administrators, or assigns, to and for his and their own proper use and benefit, and to and for no other use, intent, and purpose whatsoever; AND for facilitating the getting in and recovering the debts and sums of money due to the said (*debtor*) and other his outstanding effects, HE the said (*debtor*) HATH made, ordained, constituted, and appointed, and by these presents DOTH make, ordain, constitute, and appoint the said (*trustees*) and the survivor of them, and the executors or administrators of the survivor, and their or his assigns, and other the trustees and trustee for the time being of these presents, the true and lawful attornies and attorney irrevocable of him the said (*debtor*) and of his executors and

and pay unto the said (*debtor*), or permit and suffer him to retain out of such monies as shall come to his hands [under or by virtue of the licence or authority hereinbefore to him given,] any sum or sums of money not exceeding in the whole the sum of £ , for the purpose of enabling him to keep up a sufficient stock of goods and commodities in the said trade or business of , or other purpose or purposes which to them the said trustees or trustee shall think fit, and for the benefit of the said trust estate, or the necessary or proper support of him the said (*debtor*)."

administrators, and in his name or the names of his executors or administrators, or otherwise, to ask, demand, sue for, recover, and receive, of and from all and every or any person or persons whomsoever, all such sum and sums of money as to him the said (*debtor*) now is, are, or shall, or may at any time hereafter during the continuance of the trusts of these presents become due or payable, and upon receipt thereof, or any part thereof, releases, acquittances, and other proper and sufficient discharges to make and give; and on non-payment thereof, or of any part thereof, to commence and prosecute all and every such actions, remedies, or means for recovering the same, as to them or him shall seem meet; and also to submit and refer to arbitration all disputes and differences which may be now subsisting between the said (*debtor*) or any other person or persons whomsoever, or which shall at any time or times hereafter during the continuance of the said trusts, arise or subsist between the said trustees or trustee for the time being, and any creditor, or other person or persons, touching or concerning the said trust estate and premises, or any part thereof, and to do, perform, and execute all such matters and things as shall or may be necessary or proper for giving effect to such submission and references, and the awards to be made pursuant thereto, or any or either of them; and also to compound and agree with any of the creditors of the said (*debtor*) or with any other person or persons who is, are, shall, or may

DEBTOR
AND
CREDITOR.

*Assignment
of Stock in
Trade, &c.
for Creditors.*

DEBTOR
AND
CREDITOR.

*Assignment
of Stock in
Trade, &c.
for Creditors.*

Covenants by
debtor.

That debts in
schedule are
owing.

be indebted to him or his estate, in such manner as he or they the said trustees or trustee shall in their or his discretion think fit (1); and generally to do, perform, and execute all such other acts, deeds, matters, and things, necessary or fit to be done, executed, or performed, in or concerning the premises, as fully and effectually to all intents and purposes, as he the said (*debtor*) could do, were he personally present to do the same, and these presents had not been made, and one or more attorney or attornies under them or him the said trustees or trustee, to constitute and appoint, for all or any of the said purposes; he the said (*debtor*) hereby ratifying and confirming, and promising and agreeing, from time to time, and at all or any time or times, to ratify, allow, and confirm all and whatever shall or may be by him or them the said trustees or trustee done or directed to be done in relation thereto. AND (2) the said (*debtor*) for himself, his heirs, executors, and administrators, doth hereby covenant and declare, to and with the said (*trustees*) their executors, administrators, and assigns, in the manner following (that is to say) that all and every the debt and debts, sum and sums of money, mentioned in the schedule hereunto annexed or otherwise ex-

Reference to
creditors.

(1) If it be agreed that differences may be referred to the creditors, see *ante*, p. 437.

To counsel.

If to the decision of counsel, see *ib.* 478, n. (1).

Lease.

(2) If a lease be also assigned, add here covenants for title, &c. as *ante*, p. 542.

pressed to be due and owing to the said (*debtor*) by or from the several persons therein named, now are and is well and truly due, owing, and subsisting; AND that neither the said (*debtor*) nor any other person or persons, for his use, or by his order, have or hath, at any time or times heretofore, made, done, committed, or suffered any act, matter, or thing, nor shall nor will, at any time or times hereafter, without the consent of the said trustees or trustee for the time being, make, do, commit, or suffer any act, deed, matter, or thing whatsoever, whereby all or any of the debts, sums of money, or other demands, so mentioned to be due and owing to him the said (*debtor*) as aforesaid, or any part thereof, can or may be released, discharged, or otherwise vacated, nor shall nor will he the said (*debtor*) revoke the power or authority hereby given to the said (*trustees*) nor in anywise obstruct or hinder them, or any or either of them, in recovering, receiving, or getting in the same; but shall and will permit and suffer him and them the said trustees or trustee, peaceably and quietly to recover, enforce, and receive all and singular the said debts, sums of money, and demands respectively, upon, and for the trusts, intents, and purposes aforesaid, and ratify, allow, and confirm all and whatsoever he or they shall do or cause to be done in or about the premises by virtue of these presents. AND FURTHER, that he the said (*debtor*) his executors and administrators, shall and will, from time to time, and at all times hereafter, make, do, execute, and perform, such further

DEBTOR
AND
CREDITOR.

*Assignment
of Stock in
Trade, &c.
for Creditors.*

Covenant for
further
assurance.

DEBTOR
AND
CREDITOR.

*Assignment
of Stock in
Trade, &c.
for Creditors.*

Will assist the
trustees.

Will assign
debts omitted.

and other acts, matters, and things, for the further and better, or more satisfactorily assigning and assuring of all and singular the premises hereinbefore assigned, or intended so to be, unto them or him the said trustees or trustee, upon the trusts and to and for the intents and purposes hereinbefore expressed, as by them, or any or either of them, shall be lawfully and reasonably required; AND shall and will, from time to time, and at all times as often as there shall be occasion, upon request and notice to him given by the said trustees or trustee, assist them, or any or either of them, in the making up of the said accounts, and in settling any dispute that shall at any time hereafter arise or subsist, touching or concerning any of the debts or sums of money whatsoever, due and owing, or supposed to be due and owing to the said (*debtor*), and also in the proving and establishing the said debts or sums respectively, according to the best of his power and ability. AND that in case any debt or debts, or sum or sums of money now due and owing unto him the said (*debtor*) as is or are omitted to be mentioned in the schedule hereunto annexed, he the said (*debtor*) his executors or administrators, shall and will, at any time hereafter, on request made to him or them for that purpose, transfer and assign all and every such debt or debts, or sum or sums of money, unto them the said trustees or trustee, upon and for such trusts, intents, and purposes, as are hereinbefore expressed concerning the debts or

sums comprised therein (1). AND the said (*trustees*) for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, but not any one of them for the other or others, or the heirs, executors, or administrators of the other or others of them, do respectively covenant, promise, and agree, with and to all and every other of the creditors of the said (*debtor*) who shall execute these presents, and make due proof of their respective debts as aforesaid (2), that they the said (*trustees*) respectively, and their respective executors and administrators, shall and will, from time to time, and at all times hereafter, as often as they shall be thereunto requixed by

DEBTOR
AND
CREDITOR.

Assignment
of Stock in
Trade, &c.
for Creditors.

Covenant by
trustees to
account, &c.

(1) If the debtor be in copartnership, and the assignment is not intended to affect the partnership effects, it may be proper to add,

Assignment not
to extend to
copartnership
effects.

“ Provided always, and it is hereby declared and agreed, by and between the parties hereto, that the assignment hereinbefore made is not intended, nor shall the same extend to, comprise or in any manner affect the estate, monies, or effects which he the said (*debtor*) now hath, or shall hereafter have, jointly or in copartnership with (*his copartner*), nor shall the trusts and provisions by these presents made, or intended to be made, or declared for payment of the debts of him the said (*debtor*) extend to, comprehend, or affect any debts, payments, or demands, due or owing by or from him the said (*debtor*) jointly, or as copartner with the said (*his copartner*) or to which he the said (*debtor*) is or may be separately liable on account of the said copartnership.”

If it be intended to insure the life of the debtor, add covenant here for his appearance for that purpose, as *ante*, p. 494.

Insurance.

(2) If there be many creditors, make the covenant with any one or two of them ; and see *ante*, p. 461, n. (1).

DEBTOR
AND
CREDITOR.

*Assignment
of Stock in
Trade, &c.
for Creditors.*

Will distribute
as often as there
shall be 2s. 6d.
in the pound.

any other of the said creditors of the said (*debtor*) whose debt or debts, singly or together, shall amount to the sum of £ , make, render, and give unto him or them demanding the same, a just and true account of all and every such sum and sums of money as shall be by them, or either of them the said (*trustees*) received for or upon account of the estate, property, and disposable effects, or debts, and sums of money so due, owing, and belonging respectively to the said (*debtor*), together with the times when, and the persons from whom the same were respectively received; and also, as soon as the debts or sums of money so to be received shall amount unto, or be sufficient to pay the sum of two shillings and sixpence in the pound upon the debts to be so proved as aforesaid, shall and will, upon the request and notice to them or him given by any such other creditor or creditors as lastly aforesaid, well and truly pay, distribute, and divide the same unto and amongst themselves and all and every the other creditors of the said (*debtor*) parties or acceding to these presents, share and share alike, according and in proportion to the amount of their several and respective debts (1); and so from time to time as often as the same shall amount to a sum sufficient for that purpose, and when the same shall become insufficient so to do, then shall and will pay and distribute all and

Order of payment.

(1) If the debts are to be paid according to priority, see *ante*, p. 447, n. (1).

every the said monies unto and amongst themselves and other the said creditors, as and when the same shall be received or gotten in; AND that they the said (*trustees*) respectively, shall and will, from time to time, and at all times, use their utmost endeavours to sell and dispose of the property, estate, and disposable effects, hereby assigned, at and for the best sums and prices which can be had and gotten for the same, and to collect and get in all and every the debts and sums due or payable to the said (*debtor*) as aforesaid; and also shall and will, in all other matters and things whatsoever, faithfully and justly act, according to the best of their respective power, skill, and knowledge in the execution of the trust hereby in them reposed. AND ALL and each of the said creditors parties to these presents, for the considerations hereinbefore expressed, and for other good causes and considerations them respectively hereunto moving, Do, and DOTH, for themselves, himself, and herself, severally and respectively, and for their several and respective executors, administrators, partners (1), and assigns, but not any one for the others or other of them, or the acts

DEBTOR
AND
CREDITOR.

*Assignment
of Stock in
Trade, &c.
for Creditors.*

Will use their
endeavours to
get in debts, &c.

Covenant by
creditors not to
sue debtor.

(1) A partner cannot bind his copartner by deed unless expressly authorised by the articles; *Ball v. Dunsterville*, 4 Durnf. and E. 313; *Harrison v. Jackson*, 7 *ib.* 207; or in proceedings under the bankrupt laws, where one partner may act for all; *Ex-parte Hall*, 1 Rose, 2; *Ex-parte Hodgkinson*, 19 Ves. 291; and so a release of partnership debts executed by one copartner concludes the firm. See *Tooker's Ca.* 2 Co. 68, and *Swan v. Steele*, 7 East, 211, also *Wats. Cop.* 225; but this point quæried in *Hawkshaw v. Parkins*, 2 Swanst. 539; see also *post*, Vol. VII. COPARTNERSHIP, No. II.

Copartners.

**DEBTOR
AND
CREDITOR.**

*Assignment
of Stock in
Trade, &c.
for Creditors.*

or defaults of the other or others of them, or of the executors or administrators of any other or others of them, covenant, promise, and declare, to and with the said (*debtor*) his executors and administrators, by these presents, that neither they the said creditors parties to these presents, nor their respective executors, administrators, partners, or assigns, or any of them, shall or will, in any manner or wise, sue, arrest, imprison, implead, or prosecute him the said (*debtor*) his executors or administrators, his or their goods and chattels, or lands or tenements, or any of them, for or upon account of any debt or sum of money now due and owing unto them, any or either of them; and that in case any or either of the said creditors parties to these presents, their executors, administrators, partners, or assigns, shall sue, arrest, imprison, implead, or prosecute the said (*debtor*) his executors or administrators, or his or their goods and chattels, or lands or tenements, for any such debt or sum, these presents shall be a sufficient release and discharge to all intents and purposes, both at law and in equity, to and for the said (*debtor*) his executors and administrators, and he and they respectively, and his and their goods and chattels, and lands and tenements, and every of them, shall be and are hereby acquitted, released, and discharged from and against them the said creditors and every of them, their and every of their executors, administrators, partners, and assigns, who shall so sue, arrest, imprison, implead, or prosecute the said (*debtor*) his executors or administrators, goods, chattels, lands, or tene-

ments, contrary to the true intent and meaning of these presents, and shall and may be pleaded as such accordingly. AND LASTLY, the said (*trustees*), for themselves severally and respectively, in the manner aforesaid, (and not jointly) and for their several and respective heirs, executors, and administrators, do hereby covenant, promise, and agree, with and to the said (*debtor*) his executors, and administrators, that as soon as so much of the household and other goods, wares, merchandises, and effects hereby assigned or otherwise assured, or debts, or sums of money, shall have been respectively sold, disposed of, collected in and received, as shall be sufficient for answering and satisfying all and every the trusts hereinbefore declared or intended concerning the same, they the said (*trustees*) respectively, their respective executors or administrators, shall and will assign, deliver, or pay over, as the case may require, the surplus or residue thereof unto the said (*debtor*) his executors, administrators, or assigns, to and for his and their own proper use and benefit (1).
IN WITNESS, &c.

DEBTOR
AND
CREDITOR.

Assignment
of Stock in
Trade, &c.
for Creditors.

Covenant by
trustees to pay
over surplus to
debtor.

(1) Add power to appoint new trustees, and clauses for their indemnity, as *ante*, No. IV. (A), p. 479, 481, V. (A), p. 527. New trustees.

If a lease be also assigned, covenants to indemnify the debtor from the rent, &c. may be here added, as *ante*, p. 548, n. (1). Lease.

If a policy of insurance against fire, or on the life of the debtor, is to be assigned, such assignment may be introduced here, under a FURTHER WITNESS, as *ante*, p. 550, and see *post*, No. X. rider (A). Policy.

Here may also be added a covenant by the creditors to indemnify the trustees against the consequences of actions, &c. to be commenced by them, as *ante*, pp. 484, 530. Indemnity to trustees.

DEBTOR
AND
CREDITOR.

(A) *Variation where Creditors agree to accept of a Poundage: see ante, p. 554, n. (1).*

*Assignment
of Stock in
Trade, &c.
for Creditors.*

Creditors not unfrequently agree to take a poundage in satisfaction of their debts, which is usually advanced by one of the creditors or other friend of the debtor, to whom an assignment of the debtor's effects is made for his own benefit, in which case say,

Creditors taking
a poundage
paid down.

“AND WHEREAS the said A. B. (*one of the debtors, or as the case may be*) hath proposed to the rest of the creditors of the said (*debtor*) to advance and pay to them respectively the sum of shillings in the pound, for or upon the sums to them severally due and owing from the said (*debtor*), upon having the goods, debts, and effects of the said (*debtor*) assigned or made over to him for his own use; AND whereas every of the said creditors, being well satisfied that the amount of such sums is of the full value of the estate and effects of the said (*debtor*) if sold, after deducting the expenses of sale, have consented and agreed to accept the same in full satisfaction of their said debts. Now THIS INDENTURE WITNESSETH, that the said (*debtor*) with the privity and full consent and approbation of all and every of his said creditors, testified by their being respectively parties hereto, HATH granted, bargained, sold, assigned, transferred, and set over, and by these presents DOTH bargain, sell, assign, transfer, and set over; AND for and in consideration of the sum of shillings for every twenty shillings or pound sterling, and so in proportion for every greater or less sum than a pound so due and owing to them the said creditors parties hereto respectively, by the said (*debtor*) as aforesaid, to them in hand severally paid by the said (A. B.) at or before the sealing and delivery of these presents, that is to say, the sum of £ , in full for the sum of £ , due to the said (A. B.). The sum of £ , in full for the sum of £ , due to the said (). The sum of £ , in full for the sum of £ , due to the said (), &c. (as mentioned or set forth in the schedule or inventory hereunder written or hereunto annexed).

(The payment of which said several sums by him the said (A. B.) and the receipt thereof by them the said (*creditors*) respectively they do hereby severally and respectively acknowledge and declare themselves to be therewith contented, satisfied, and fully paid, and thereof and therefrom, and of and from every part thereof, do, and each and every of them doth acquit, release, and discharge, as well the said (*debtor*) his executors and administrators, as also him the said (A. B.) for ever, by these presents), They, and each and every of them the said creditors parties to these presents, as far as in them respectively lies, or as they lawfully can or may, HAVE, and each of them HATH bargained, sold, assigned, ratified, and confirmed, and by these presents Do and DOTN bargain, sell, assign, ratify, and confirm unto the said (A. B.) his executors, administrators, and assigns, ALL and singular the goods and chattels, debts, sum and sums of money, rights and credits, due and owing to the said (*debtor*), and all other the personal estate and effects of him the said (*debtor*), and also all and every the bonds, bills, notes, and other securities whatsoever, of them the said creditors respectively, and all their respective estates, rights, titles, and interests, in or to the same. TO HAVE AND TO HOLD the said goods and chattels, debts, sum and sums of money, rights, and credits, and all and singular other the premises hereinbefore assigned or otherwise assured, or intended so to be, and every part and parcel thereof, unto and by him the said (A. B.) his executors, administrators, and assigns, to and for the sole use, benefit, and advantage of him the said (A. B.) his executors, administrators, and assigns, absolutely and for ever, and to and for no other use, intent, or purpose whatsoever. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, they the said creditors parties hereto, HAVE, and each and every of them HATH remised, released," &c. as *ante*, p. 554, and then make the covenants, &c. with A. B. instead (as there) of the trustees.

DEBTOR
AND
CREDITOR.

*Assignment
of Stock in
Trade, &c.
for Creditors.*

DEBTOR
AND
CREDITOR.

*Assignment of
Copartnership
Effects for
Creditors.*

No. VIII.

*Assignment of Effects, &c. by Copartners in Trade
for the Benefit of their Joint and Separate Cre-
ditors.*

*Variations where a Lease of the Premises where the
Business is carried on is also assigned.*

Other Variations as below (1).

Recital of co-
partnership.

THIS INDENTURE made the day of
BETWEEN (*the debtors*) of, &c. (copartners
in trade) of the first part, (*trustees*) of, &c.
(creditors of the said (*debtors*)) of the second part,
and the several other persons whose names and
seals are hereunto subscribed and affixed respec-
tively, being joint and separate creditors (2) of the
said (*debtors*) of the third part. WHEREAS the said
(*debtors*) have for several years past carried on the
joint trade of in copartnership, but by reason
of various losses and misfortunes in trade they are

(1) See, also Variations to No. IV. p. 398, *et seq.* and No. V. (A), p. 506, *et seq.*

Separate as well
as joint creditors
parties.

(2) In order to the validity of the assignment by joint traders the concurrence of the separate as well as the joint creditors is requisite; for although all the joint creditors concur, yet if any separate creditor of either of them refuse, the assignment will be void, *quo ad* his share, and as to him (if by deed) is an act of bankruptcy by the debtor, *Eckhardt v. Wilson*, 8 Durn. and E. 140.

unable to pay the immediate demands upon them, and have therefore proposed to convey and make over the whole of their estates and effects, as well joint as separate, to the said (*trustees*), in trust for themselves and the rest of their said creditors, in such manner as the same joint and separate estates would be distributable under a commission of bankrupt, upon condition of their being released from all further liability in respect of their said debts; AND WHEREAS the said several parties hereto of the second and third parts respectively, being all the creditors of the said (*debtors*) whose respective debts amount to £ and upwards, have agreed to the said proposal (1). Now THEREFORE THIS INDENTURE WITNESSETH, that for the considerations and purposes hereinbefore

DEBTOR
AND
CREDITOR.

Assignment of
Copartnership
Effects for
Creditors.

Proposition to
assign their
property for
benefit of their
creditors.

(1) If the debtors or either of them be possessed of real estates proposed to be conveyed by a separate deed, (and see *ante*, p. 421, n. (25), 439, n. (1)), refer to such conveyance here, as,

Real estates.

“ AND WHEREAS the said (one of the *debtors*) being seised or otherwise entitled to his own separate use of certain freehold lands and hereditaments situated at , hath, in pursuance of the said agreement on his part to be performed, by indentures of lease and release, the lease bearing date the day next before the day of the date of the release, and the release bearing or intended to bear even date herewith, granted and released or otherwise assured the same to and to the use of the said (*trustees*) their heirs and assigns, IN TRUST to sell and apply the produce thereof for the benefit of the joint and several creditors of them the said (*debtors*) in the manner hereinafter declared, or particularly referred to, concerning the same, as by reference to the said indenture of release being had will more fully appear.”

Recital of conveyance of real estates.

DEBTOR
AND
CREDITOR.

*Assignment of
Copartnership
Effects for
Creditors.*

Assignment of
lease by
separate deed.

Assignment of
lease by same
deed.

expressed (1), they the said (*debtors*) HAVE, and each of them HATH bargained, sold, assigned, transferred, and set over, and by these presents Do,

If a lease of the premises, where the business of the joint trade is carried on, is intended to be assigned by a separate deed, add,

“AND WHEREAS by indenture of lease bearing date the day of , and made between (*the lessor*) of the one part, and the said (*debtors*) of the other part, the said (*lessor*) demised to the said (*debtors*) the messuage or dwelling-house, warehouses and premises, situated, &c. where the said joint trade is now carried on, To HOLD the same to them the said (*debtors*) their executors, administrators, and assigns, from the day of for the term of years thence next ensuing, and which said messuage or dwelling-house hath, in part performance of the said agreement, by indenture bearing or intended to bear even date herewith, been assigned to the said (*trustees*) for the now residue of the said term, in trust,” &c. (*as in the last above variation*).

(1) If the lease of the premises is assigned by the same deed, add,

“AND for and in consideration of five shillings of lawful current money of England to each of them the said (*debtors*) in hand well and truly paid by the said (*trustees*) at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, they the said (*debtors*) HAVE, and each and every of them HATH bargained, sold, assigned, transferred, and set over, and by these presents Do, and each and every of them DOTH bargain, &c. unto the said (*trustees*) all that and singular the said leasehold messuages or tenements, warehouses and premises in the said recited indentures of lease so demised, with the appurtenants, together also with the said respective indentures of lease, AND ALSO ALL,” &c. (*as in the text*) *infra*, p. 577.

and each of them DOth bargain, sell, assign, transfer, and set over unto the said (*trustees*) ALL and singular the stock in trade, goods, wares, and merchandizes; and debts, sums of money, household and other goods, furniture, bonds, bills, notes, securities and vouchers of payments, plate, jewels, capital stocks in the public funds (1), and all other the estates, property, and effects of what nature or kind soever, and wheresoever situated or being, and in whosoever hands, custody, or power soever, the same or any of them, or any part thereof, now are or is, or at any time hereafter shall or may come or be, with their and every of the rights and appurtenants to the same respectively belonging; and all benefit and advantage of the same; and all the estate, right, title, and interest, property, claim, and demand whatsoever, of them the said (*debtors*), whether jointly as copartners in trade, or separately in their own respective separate and distinct capacities, therein or thereto (the wearing apparel of themselves and families, and other the things mentioned in the schedule hereunto annexed or hereunder written, marked with the letter A, only excepted). To HAVE AND TO HOLD the said stock in trade, goods, wares, merchandizes, funds, securities, and all and singular other the property and premises hereinbefore assigned, or otherwise assured or intended so to be, and every part thereof respectively, unto and by them the said (*trustees*) their executors, administrators, and

DEBTOR
AND
CREDITOR.

Assignment of
Copartnership
Effects for
Creditors.

Assignment of
stock in trade,
&c.

To HOLD to
the trustees.

(1) If the parties be copartners in ships, &c. see and add as Ships, &c. ante, p. 555, n. (1).

DEBTOR
AND
CREDITOR.

*Assignment of
Copartnership
Effects for
Creditors.*

Upon trust to
sell, &c.

assigns, absolutely and for ever (1); BUT UPON THE TRUSTS nevertheless, and to and for the ends, intents, and purposes hereinafter declared or expressed concerning the same, (that is to say) UPON TRUST that they the said (*trustees*) and the survivors or survivor of them, and the executors, administrators, and assigns of the survivor, and their or his assigns, or other the trustees or trustee for the time being, of these presents, do and shall, with all convenient speed, sell and dispose of all and singular such parts of the said joint and separate estate, property, and effects as are of a saleable nature, for the most money which in their or his opinion can be procured for the same; and to use their and his utmost endeavours by all lawful ways and means to obtain, recover, and receive such parts of the same estate, property, and effects as consist of debts or other outstanding interests, into their or his hands and possession; and forthwith, after deducting and retaining to or for every of themselves the said (*trustees*) and their and his executors, administrators, and assigns all such costs, charges, and demands as they shall respectively sustain, incur, or be reasonably entitled unto, in, for, or in relation to the execution of the trusts hereby in them reposed. UPON TRUST (2) from time to time to pay, distribute, and divide the whole of the remainder of such monies, estate,

Lease.

(1) If the lease of the premises be also assigned, add, *Habendum*, as *ante*, p. 537.

(2) See a fuller form, and also further trusts, *ante*, p. 443, 509, mar. (*).

and effects to and amongst themselves the said (*trustees*), and all and every other *bonâ fide* creditors of the said (*debtors*), parties hereto of the third part, their respective executors, administrators, partners, or assigns, rateably and in proportion to the several amounts of their respective debts, to be verified on their respective oaths, if required by any or either of the said (*trustees*). AND in case there shall remain or be any surplus of the said joint estate or separate estate, after all such payments and distribution as aforesaid, THEN UPON TRUST to pay and divide the same to and amongst the said (*debtors*) their executors, administrators, and assigns respectively, in proportion and according to their joint and several rights and interests therein and thereto, or to their respective executors, administrators, or assigns. PROVIDED ALWAYS, and it is hereby declared to be the true intent and meaning hereof, and of every of the parties hereto respectively, that distinct and separate accounts shall be kept of the joint estate and effects of the said (*debtors*) and also of their separate estate and effects, as well real as personal, and that what shall be found to belong to their said separate estate or estates shall be applied in the first place in and toward satisfaction of the debts of their respective separate creditors, rateably and in proportion to their said respective separate debts, as set opposite to their respective names in the schedule hereunder written or hereunto annexed, marked with the letter (B); And in case there shall be any surplus of their said joint estate after

DEBTOR
AND
CREDITOR.

Assignment of
Copartnership
Effects for
Creditors.

And (after payment of expenses) to divide produce amongst creditors.

Surplus to debtors.

Separate accounts to be kept of the joint and separate estates.

And separate estate to be first applied in payment of separate debts.

DEBTOR
AND
CREDITOR.

*Assignment of
Partnership
Effects for
Creditors.*

Surplus of joint
estate to be car-
ried to their re-
spective sepa-
rate accounts.

Surplus of sepa-
rate estates to
be carried to
their joint ac-
counts.

Letter of at-
torney.

all their said joint creditors shall be paid and satisfied the amount of their whole demands, then that the share or shares, interest or interests in such overplus of them the said (*debtors*) whose separate estate or estates shall have been, or is, or are to be so applied as aforesaid, shall be carried to the account of his or their separate estate or estates, and be applied in or towards satisfaction of his or their separate debts; And in case there shall be any surplus of their said separate estate or estates after all their separate creditors shall have been paid and satisfied their whole demands, then that the overplus of such separate estate or estates shall be carried to the account of their joint estate, and be applied in or towards satisfaction of their said joint debts (1). AND for the better and more easily getting in, recovering, and receiving of all and every the said joint and several estate and effects now due, owing, or belonging to the said (*debtors*) or any or either of them, they the said (*debtors*) have, and each and every of them hath named, constituted, and appointed, and by these presents do, and each and every of them doth name, constitute, and appoint the said (*trustees*), and the major part of them, and the survivors or survivor of them, and the executors and administrators of the survivor, and their and his assigns, their, his, and her true and lawful attornies and attorney irrevocable, jointly and severally,

Variations.

(1) See also (for variations, if requisite) *ante*, pp. 441, *et seq.* notes, marg. "Copartners."

in their or his own names or name, or in the names or name of them the said (*debtors*) jointly or severally, or otherwise howsoever, as the case may require, (but to and for the use and benefit of all and every their said respective creditors, in the manner hereinbefore declared) to ask, demand, sue for, recover, and receive of and from all and every person and persons who are or shall or may stand or be indebted to, or who do or shall have, hold, and retain any sum or sums of money, property, estate, or effects belonging to them, or either of them, all such the said sum or sums of money, estate, property, and effects; and upon receipt or delivery thereof, or of any part thereof, proper acquittances and releases for the same to sign and give, and on non-payment or non-delivery thereof, such actions, suits, attachments, or other legal or equitable process to commence and prosecute for recovery thereof, as shall be thought advisable; and also to compound for the same if it shall be thought most advantageous; and for any or either of the purposes aforesaid to substitute one or more attorney or attorneys under them, and the same to remove, and others to appoint, at pleasure, they the said (*debtors*) hereby granting their full power, authority, name and names, jointly and severally, for performing all and every the said intents and purposes in like manner as they or any or either of them might or could have done in case these presents had not been made. AND each of them the said (*debtors*) doth hereby for himself, his heirs, exe-

DEBTOR
AND
CREDITOR.

Assignment of
Copartnership
Effects for
Creditors.

Covenant by
debtors not to
encumber, &c.

**DEBTOR
AND
CREDITOR.**

*Assignment of
Copartnership
Effects for
Creditors.*

cutors, and administrators covenant, promise, and agree with and to the said (*trustees*) their executors, administrators, and assigns in the manner following (that is to say) that they the said (*debtors*) respectively have not nor hath either of them (each covenanting apart from the other of them) at any time heretofore made, done, committed, or knowingly suffered, nor been party or privy to, nor shall or will, they or either of them (so separately covenanting as aforesaid), at any time or times hereafter during the continuance of any of the trusts of these presents, make, do, commit, or suffer to be made, done, or committed any act or thing whatsoever, whereby any debt or debts owing to them, or either of them, hath or have been or shall or may be released or discharged, or any estate, or effects hereinbefore assigned or intended so to be, has or have been, or shall or may be disposed of or concealed; or the power and authority hereinbefore given revoked or annulled; or the due recovery and receiving the said respective debts, estate, and effects, obstructed, hindered, or delayed, or any action, suit, or process which shall or may be commenced for recovery thereof, released, discontinued, or otherwise prejudiced; or any defence concerning the same be prevented or rendered ineffectual; But on the contrary shall and will at all times permit and suffer, promote and forward the due and speedy receipt and recovery thereof, and ratify, allow, and confirm all such acts as shall be lawfully done therein by virtue of these presents.

AND also shall and will assist in making up their joint and separate accounts, and elucidating the same, and do, perform, and execute all such further and other acts, deeds, matters, and things whatsoever as shall be requisite or expedient in and towards the performance and final execution of the trusts hereby created, declared, or intended concerning the premises (1). AND the said (*trustees*) for themselves severally and respectively, and their several and respective executors and administrators, but not jointly, or any one or more of them for the other or others of them, or their or his executors or administrators, do hereby covenant, promise, and agree with and to the said (*debtors*) and each of them, and their respective executors and administrators, and to and with all and every their and his said creditors parties hereto of the third part (2), their respective executors and administrators, in the manner following, (that is to say) that they the said (*trustees*) and the survivor and survivors of them, and the executors and administrators of such survivor, shall and will from time to time, when and as often as any monies, estates, or effects shall come to their or his hands by virtue of these presents, (after deducting and retaining all such costs, charges, expenses, and demands as aforesaid) well and truly share, divide, and pay the same to and among themselves, and

DEBTOR
AND
CREDITOR.

*Assignment of
Copartnership
Effects for
Creditors.*

Covenant by
trustees duly
to apply the
trust monies.

(1) If the life of the debtors, or of either of them, be intended to be insured, see *ante*, p. 494. Insurance.

(2) See *ante*, p. 461, n. (1).

Covenant by
trustees.

DEBTOR
AND
CREDITOR.

*Assignment of
Copartnership
Effects for
Creditors.*

Monies as re-
ceived to be in-
vested at in-
terest.

Clauses for
trustees' in-
demnity.

Creditors accept
of assignment in
full of their
debts.

all the rest of the said creditors, parties hereto of the third part, in rateable proportions according to the sums set against their respective names in the said schedule hereunder written, or hereunto annexed marked (), and the surplus of the said respective joint and separate estates according to such shares and interests, agreeably to the trusts and to the proviso hereinbefore declared or expressed concerning the same respectively, and for no other use or purpose whatsoever. AND also that all monies collected and received by them respectively for or on account of the said joint or separate estate or estates, shall, during the interval of any division of the said joint and separate estate and estates as is hereinbefore mentioned and provided, be paid in the joint names of them the said (*trustees*) to the governor and company of the Bank of England, or invested in their joint names in the purchase of exchequer bills, or such other government securities as shall be thought advisable. PROVIDED ALWAYS, and it is hereby declared and agreed, that neither of them the said (*trustees*) their executors or administrators, or other trustees or trustee for the time being of the said trust estate, shall be liable or accountable for more money or effects than they shall respectively receive, nor for any loss or damage which may happen thereto, except the same shall arise by or through their own respective wilful neglect or means. AND they the said respective creditors, parties hereto of the second and third parts, in performance on their part of the aforesaid agree-

ment, and in consideration of the provisos and covenants hereinbefore made and entered into by and on the part of the said (*debtors*) and of the trusts hereby created, and for other good and valuable considerations, them hereunto respectively moving, do, and each and every of them for himself and herself severally and respectively, and for their several and respective executors, administrators, and assigns, doth hereby accept and take the said joint and several estates and effects hereinbefore assigned in full payment, satisfaction, and discharge of all their respective debts and demands. And do and doth freely, clearly, and absolutely remise, release, exonerate, discharge, and for ever quit claim unto the said (*debtors*) jointly and severally, and their joint and several heirs, executors, and administrators, and their respective future lands, tenements, goods, chattels, and effects from and against all and every of the respective debts of them the said creditors, and all and all manner of actions, suits, cause and causes of action and suit, both at law and in equity, which they the said creditors, any or either of them, their, any, or either of their executors, administrators, or assigns, now have, ever had, or at any time hereafter can, shall, or may have, claim, challenge, or demand against them the said (*debtors*) either jointly or severally, their or either or any of their heirs, executors, or administrators, for or by reason or on account of the said respective debts so now due to them as aforesaid, or for or by reason or on account of any claim, demand, cause, matter, or thing whatsoever, re-

DEBTOR
AND
CREDITOR.

*Assignment of
Copartnership
Effects for
Creditors.*

And release
debtors.

DEBTOR
AND
CREDITOR.

*Assignment of
Copartnership
Effects for
Creditors.*

Unless they
have acted
fraudulently.

lating to the same prior to the date of these presents. PROVIDED ALWAYS, and these presents and the release hereinbefore contained are and is upon this express condition, that in case it shall at any time within the space of three years now next ensuing be made to appear that they the said (*debtors*), or any or either of them, have or hath secreted and concealed any part of their respective joint or separate estate or effects to the amount or value of £ over or above the estates and effects hereinbefore assigned in trust as aforesaid, or shall have otherwise acted fraudulently towards them the said creditors, or any or either of them, then the general release hereinbefore given shall, as to the said (*debtors*) or such of them so offending, be void and of no effect to all intents and purposes whatsoever, and then and from thenceforth every creditor party hereto shall be entitled to the whole of his or their said respective debts, or to so much thereof as shall then remain unpaid and unsatisfied, with lawful interest for the same, from the day of the date of these presents, and shall and may have full power and authority to commence such process for recovery thereof against them the said (*debtors*) or him so offending as aforesaid, or his or their respective executors and administrators, as if these presents had not been made (1). IN WITNESS, &c.

Privilege.

(1) If the debtors, or either of them, have the privilege of parliament, see Vol. V. p. 232, and *ante*, p. 494.

Policy.

If a life policy is to be assigned to the trustees, see *post*, 616.

DEBTOR
AND
CREDITOR.

*Conveyance, &c.
of Real and Per-
sonal Estates
for Creditors.*

No. IX.

*Conveyance and Assignment of Freehold, Copy-
hold, Leasehold, and Personal Estates to Trus-
tees in Trust for Creditors.*

Variations as in the Margin below (1).

THIS INDENTURE, of three parts, made the
day of , in the year of the
reign, &c. , and in the year of our Lord
. BETWEEN (*the debtor*) (2) of, &c.
of the first part, (*the trustees*) of, &c.
(creditors of the said (*debtor*), and also trustees
named and appointed on behalf of themselves and
other the creditors of the said (*debtor*) for the pur-
poses hereinafter mentioned of the second part,
and the several persons creditors also of the (*debtor*)
who by themselves or their respective attorneys or
partners shall execute these presents of the third

(1) See also notes and variations to No. IV. *ante*, p. 398, et Notes, &c. *seq.*

(2) If there be several debtors in copartnership, see *ante*, No. VIII. Several debtors.

If an incumbrancer be a party, see *ante*, p. 399, n. (†).

Incumbrancer
party.

DEBTOR
AND
CREDITOR.

Conveyance, &c.
of Real and Per-
sonal Estates
for Creditors.

Recital of lease.

Of state of
debtor's affairs.

part. WHEREAS the said (*debtor*) is seised of the several freehold and copyhold messuages, lands, and hereditaments hereinafter described, and intended to be hereby released and covenanted to be surrendered respectively. AND is also possessed of the several leasehold messuages, or tenements and ground, hereinafter described, and intended to be hereby assigned, under or by virtue of an indenture of demise or lease, bearing date the day of , and made or expressed to be made between A. B. (*the lessor*) of the one part, and the said (*debtor*) (1) of the other part, for the term of years, commencing from the day of then last, at the clear yearly rent of £ (2). AND is also entitled to outstanding debts and other personal estate of various kinds, which are intended to be particularly mentioned in the schedule hereunder written, marked with the letter (A.) AND WHEREAS the said (*debtor*) is indebted unto the several persons mentioned in the schedule hereunder written, marked with the letter B, in the several sums of money set opposite to their respective names, and

Fuller form.

(1) A fuller form of the recital of the lease may be found *ante*, p. 533.

Intermediate
assignment.

If the premises have been the subject of intermediate assignment since the original demise, see *ante*, 534, n. (1).

Debtor an
assignee.

(2) If the debtor be an assignee only of the premises, recite here the assignment to him, as in *ibid*.

Moiety, &c.

If the assignment be a moiety only of the premises, recite here the will, devising the premises to the debtor and another, or as the case may be.

being at present unable to pay the whole amount of his said debts, hath agreed to convey, surrender, assign, and assure all and every his lands, tenements, hereditaments, and property, as well real as personal, unto the said (*trustees*) in trust to pay and satisfy the same in the manner hereinafter expressed. Now THIS INDENTURE WITNESSETH, that in pursuance and part execution of the said agreement, [and in consideration of the sum of 10s. of lawful money of England, to the said (*debtor*) in hand well and truly paid by the said (*trustees*) at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged)] and of the licence and release hereinafter contained, HE (1) the said (*debtor*) (2) HATH granted, bargained, sold, aliened, and released, and by these presents BOTH grant, bargain, sell, alien, release, and confirm, unto the said (*trustees*) and their heirs (3) ALL, &c. (4) or howsoever otherwise the said hereditaments and premises, or any of them, now are or

DEBTOR
AND
CREDITOR.

Conveyance, &c.
of Real and Personal Estates
for Creditors.

WITNESS, that
the debtor
grants and
releases.

Freehold
premises.

(1) If the debtor be tenant in tail, see *ante*, No. IV. p. 399, *Tenant in tail.*
et seq. marg. "tenant in tail."

(2) If the debtor took the estate to himself and a trustee to prevent dower, see *ante*, p. 400, n. (4), p. 402, n. (6). *Dower-trustee.*

(3) If the conveyance be of a moiety or other portion only of the estate, see Vol. V. No. XI. p. 263. *Moiety, &c.*

If of a remainder or reversion, see *ib.* No. IX. p. 216. *Remainder, &c.*

If an incumbrancer be party, see *ante*, p. 409, notes. *Incumbrancer party.*

(4) Here describe the subject of the conveyance, and see *ante*, p. 404, n. (8), and for appropriate general words, see INDEX, *voce* GENERAL WORDS. *Parcels.*

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AND
CREDITOR.

*Conveyance, &c.
of Real and Per-
sonal Estates
for Creditors.*

General appur-
tenances.

Reference to
the bargain and
sale for a year.

is, or heretofore were or was situated, tenanted, called, known, or described, and also all other the hereditaments, (if any,) comprised in the indenture of bargain and sale for a year hereinafter referred to. TOGETHER with all out-houses, buildings, yards, cellars, vaults, areas, ancient and other lights, ways, water-courses, trees, woods, fences, right of common of every kind, and all and all manner of other rights, privileges, easements, advantages, and appurtenances whatsoever to the said hereditaments and premises, or any part thereof belonging, or therewith holden, occupied, or enjoyed, (ALL which said hereditaments and premises are now legally vested in the said (*trustees*) by virtue of a bargain and sale for a year to them thereof made by the said (*debtor*) for 5s. consideration, by indenture (1) bearing date the day next before the date of these presents, for the term of one year, commencing from the day next preceding the date of the same indenture, and by force of the statute made for transferring uses into possession) and the reversion and reversions, remainder and remainders, and rents, issues, and profits of the same premises, and all the estate, right, title, and interest whatsoever, of him the said (*debtor*) in, to, or concerning the same. TOGETHER with all deeds, muni-

Lease for a
year.

(1) See the form of this bargain and sale, Vol. V. p. 26; or if it should be preferred that the lease for a year, and the release should be by the same deed, see Vol. V. No. IV. p. 64.

ments, writings, and evidences, which in any wise relate to the same premises, or to any part thereof, either alone or together with other hereditaments or property, and which now are or hereafter shall or may be in the possession or lawful power of the said (*debtor*) or his heirs. To HAVE AND TO HOLD the (1) messuages, lands, tenements, hereditaments, and all and singular other premises hereinbefore described, and by these presents granted and released, or otherwise assured or intended so to be, with their and every of their appurtenances, unto the said (*trustees*) and their heirs, to and for the use and behoof of them the said (*trustees*) (2) their heirs and assigns for ever (3), but nevertheless UPON THE TRUSTS, and to and for the ends, intents, and purposes hereinafter declared or expressed of or concerning the same (4).

AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance of the said agreement, and for the considerations aforesaid, He the said (*debtor*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said (*trustees*) their heirs and assigns, in the manner following, that is to say, that he

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AND
CREDITOR.

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for Creditors.

To HOLD upon
trusts herein-
after men-
tioned.

FURTHER WIT-
NESS, covenant
to surrender
copyholds.

(1) If the conveyance be of a moiety or other portion only of the estate, see Vol. V. No. XI. p. 266. Moiety, &c.

If of a remainder or reversion, see *ibid.* No. LX. p. 219.

Remainder, &c.

(2) If the debtor be tenant in tail, see *ante*, p. 435.

Tenant in tail.

(3) If the debtor be tenant for life only, see *ante*, p. 407, n. (13). Tenant for life.

(4) If the wife of the debtor be a party, add here a co-venant to levy a fine, as *ante*, p. 407, n. (14). Wife.

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AND
CREDITOR.

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of Real and Per-
sonal Estates
for Creditors.*

the said (*debtor*) or his heirs, shall and will, at or before the next general or other court which shall be hereafter holden in or for the manor of , or other subsequent court, when thereunto required by the said (*trustees*), or either of them, surrender, or cause to be surrendered into the hands of the lord or lords, or lady or ladies of the same manor, according to the custom thereof, to the use of the said (*trustees*) and their heirs, ALL that copyhold or customary messuage, &c. or by whatsoever other name or names, description or descriptions, the same copyhold or customary lands and hereditaments, or any of them, are or is, or heretofore have or hath been called, known, or described; Together with all manner of rights, privileges, easements, advantages, appendages, and appurtenances to the said copyhold or customary messuage or tenement, hereditaments and premises, or any part thereof belonging, or in any wise appertaining, or with the same or any part thereof now or heretofore holden, used, occupied, or enjoyed; which said surrender or surrenders so to be made as aforesaid, shall, when perfected, be and enure to the use of the said (*trustees*) their heirs and assigns, to be holden of the lord or lady for the time being of the said manor, according to the custom thereof, by the rents and services thereof due and of right accustomed; but nevertheless UPON THE TRUSTS, and to and for the ends, intents, and purposes hereinafter declared or expressed concerning the same. [AND THIS INDENTURE FURTHER WITNESSETH, that the said (*debtor*)

for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, with and to the said (*trustees*) their heirs and assigns, that he the said (*debtor*) or his heirs, shall and will, upon the request of them the said (*trustees*) or of either of them or of any the said trustees or trustee for the time being, convey and assure all other the freehold and customary or copyhold messuages, lands, tenements, and hereditaments, (if any) of him the said (*debtor*) unto and to the use of such trustees and trustee, and their or his heirs, upon the trusts hereinafter mentioned or referred unto concerning the messuages, lands, and hereditaments hereinbefore expressed to be released and covenanted to be surrendered or otherwise assured respectively.] AND THIS INDENTURE FURTHER WITNESSETH, that in further execution of the aforesaid agreement, and for the consideration aforesaid, [and in consideration of the further sum of 10s. of lawful money of England to the said (*debtor*) in hand at the time aforesaid paid by the said (*trustees*), the receipt whereof is hereby acknowledged,] HE the said (*debtor*) (1) HATH bargained, sold, and assigned, and by these presents DOTH bargain, sell, and assign unto the said (*trustees*) their executors, administrators, and assigns

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AND
CREDITOR.

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for Creditors.

FURTHER WIT-
NESS, assign-
ment of lease-
holds.

(1) If the assignment be with the consent of the lessor, see *Licence. ante*, No. VI. p. 534.

If there be two or more debtors in copartnership, see *ante*; *Copartners*. No. VIII. p. 576.

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sonal Estates
for Creditors.*

ALL that, &c. (1) being the messuage or tenement and premises comprised in and demised by the hereinbefore in part recited indenture of demise or lease, of the day of , together with all and every the rights, members, easements, and appurtenances to the same premises, or any part thereof belonging, or in any wise appertaining, and also the said indenture of demise or lease, and all mesne assignments, if any, thereof; And all the estate, right, title, interest, term and number of years now to come and unexpired, property, claim, and demand whatsoever, both at law and in equity, of him the said (*debtor*), of, in, or to the same premises. TO HAVE AND TO HOLD the

Parcels.

Conciseness.

(1) Insert here an accurate description of the parcels from the lease, or if conciseness be desired, instead of the above several witnessing parts, say,

“ALL and singular the messuages, lands, tenements, and hereditaments of or to which he the said (*debtor*) or any person or persons in trust for him, is or are possessed or entitled, for any term or terms of years, or chattel interest, and all and singular the personal estate, chattels, and effects, of him the said (*debtor*), and all and singular the estates, right, title, and interest thereto, TO HAVE AND TO HOLD the said leasehold messuages, &c. hereby assigned or expressed, or intended so to be, unto the said (*trustees*) their executors, &c. for the residue now to come of the said term or terms for which the same are holden, subject, nevertheless, to the rents and covenants to be paid and performed in respect thereof; AND TO HAVE AND TO HOLD all and singular the personal estate and effects hereby assigned, or expressed, or intended so to be, unto the said (*trustees*) their executors and administrators absolutely.”

messuage or tenement, piece or parcel of ground, and all and singular other the premises lastly hereby assigned, or otherwise assured, or intended so to be, unto the said (*trustees*) their executors, administrators, and assigns, from henceforth for and during all the residue or remainder now to come or unexpired of the said term or period of years, in or by the said indenture of lease granted, or which he the said (*debtor*) now hath therein under or by virtue of the same, subject only to the payment of the yearly rent thereby reserved, and to the observance and performance of the covenants and agreements which on the part of the tenant or assignees, are thereby required to be observed or performed ; But nevertheless UPON THE TRUSTS, and to and for the ends, intents, and purposes hereinafter declared or expressed concerning the same. AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance and execution of the aforesaid agreement, and for the consideration aforesaid, [and of the further sum of 10s. to the said (*debtor*) in hand paid by the said (*trustees*) at the time aforesaid, the receipt whereof is hereby acknowledged,] He the said (*debtor*) HATH granted, bargained, sold, assigned, transferred, and set over, and by these presents DOTH grant, bargain, sell, assign, transfer, and set over, unto the said (*trustees*) their executors, administrators, and assigns, ALL that the stock in trade, goods, wares, and merchandise, book and other debts, bonds, notes, bills, and all and

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AND
CREDITOR.

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sonal Estates
for Creditors.*

To hold to the
trustees for the
residue of the
term.

FURTHER WIT-
NESS, assign-
ment of per-
sonalty.

DEBTOR
AND
CREDITOR.

*Conveyance, &c.
of Real and Per-
sonal Estates
for Creditors.*

To hold to the
trustees abso-
lutely.

Power of attor-
ney to receive
debts.

singular other the personal estate, property, and effects, of what nature or kind soever, of or belonging, or due, or owing to him the said (*debtor*), together with all books of account, vouchers, and other papers and writings in anywise relating to or concerning the same, and all the estate, right, title, interest, property, claim, and demand whatsoever, of him the said (*debtor*) of, in, or to the same; together with all powers, remedies, and means of him the said (*debtor*) both at law and in equity, for receiving, recovering, and enforcing payment of the same. To HAVE AND TO HOLD, receive, perceive, take, and enjoy, all and singular the stock in trade, debts, securities, and other the personal estate, effects, and premises lastly hereby assigned, or otherwise assured or intended so to be, unto them the said (*trustees*) their executors, administrators, and assigns, wholly and absolutely as if the same were their own proper goods, chattels, and effects; But nevertheless UPON THE TRUSTS, and to and for the ends, intents, and purposes hereinafter declared or expressed concerning the same. AND for the better enabling the said (*trustees*) their executors, administrators, and assigns, to recover and receive, the said debts, estates, and effects, HE the said (*debtor*) HATH made, constituted and appointed, and by these presents DOTH, &c. (*add usual letter of attorney*) (1).

(1) See *ante*, p. 564.

AND it is hereby expressly agreed and declared by and between the said parties to these presents, that the said (*trustees*) and their heirs shall stand and be seised, possessed of, interested in, and entitled to all and singular the freehold, copyhold, and leasehold messuages, lands, tenements, and hereditaments, and personal estate, property, and effects, hereinbefore particularly mentioned or described, and hereby granted, released, covenanted to be surrendered and assigned respectively, or intended so to be, upon the trusts and for the several ends, intents, and purposes hereinafter declared, expressed, or referred unto concerning the same (that is to say) UPON TRUST that they the said (*trustees*) and the survivors and survivor of them, or the heirs, executors, or administrators of such survivor, and their or his assigns, shall and do (as soon as conveniently may be after the execution of these presents), of their or his own proper authority, and without the concurrence of, or any further power or authority from the said (*debtor*) his heirs, executors, or administrators, than is hereby given, sell and dispose of, and grant, release, surrender, assign, and assure, either absolutely or by way of mortgage, in fee-simple, or for any term or number of years, and either together or in parcels, and by public or private sale, or in such other way or manner as they or he shall think fit, ALL and singular or any part of the same freehold, copyhold, and leasehold messuages, lands, and hereditaments, with their and every of their appurtenances, for such price

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CREDITOR.

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sonal Estates
for Creditors.*

Declaration of
trust.

To raise money
by sale, &c. for
purposes after
mentioned.

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AND
CREDITOR.

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of Real and Per-
sonal Estates
for Creditors.*

The trustees to
stand possessed
of the money
to arise by
such sale.

Upon trust, &c.

or prices in money or other equivalent as they or he the said trustees or trustee shall deem reasonable; and receive, and sign effectual receipts and discharges for, the purchase money or other consideration to be paid or given for the same; and it is hereby declared by the several parties hereto, that the person or persons, his or their executors or administrators, paying or giving such money or consideration, and obtaining such receipt or discharge from the said trustees or trustee, or such one or more of them as shall be the only acting trustees or trustee for the time being, shall not afterwards be liable to see to the application of the same, or answerable for the loss or misapplication thereof, or of any part thereof. AND it is hereby agreed and further declared by and between the several persons parties hereto, according to their respective interests, that they the said (*trustees*) and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, and their and his assigns, shall stand and be possessed of and interested in all and singular the sum and sums of money or other consideration to arise or be produced by any sale, mortgage, or other disposition which shall be made of the said hereditaments or of any part thereof, and of and in the debts and effects which shall be gotten in or received under or by virtue of these presents, and the rents, issues, and profits of the said premises in the mean time, UPON THE TRUSTS, and to and for the ends, intents, and purposes "declared or expressed concerning the same, in

or by a certain indenture already prepared and engrossed, and bearing or intended to bear even date with these presents and referring hereunto” (1). AND the said (*debtor*) [*or each of them the said (debtors)*] (2) for himself, his heirs, executors, and administrators, doth hereby covenant, grant, and agree to and with the said (*trustees*) in the manner following, that is to say, as to and respecting the freehold and copyhold messuages, lands, and hereditaments, hereinbefore expressed to be hereby granted and released, and covenanted to be surrendered respectively, to and with them the said (*trustees*) their heirs and assigns, as to and respecting the leasehold messuages and premises expressed to be hereby assigned, to and with their executors, administrators, and assigns, that for and notwithstanding any act, deed, matter, or thing, by him the said (*debtor*) [*or them*

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CREDITOR.

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sonal Estates
for Creditors.

Covenant by
debtor that he
is seised in fee
of the freeholds.

(1) See a deed of trust of this kind, *ante*, No. IV. (A), p. 439; V. (A), p. 506. Separate trust deed.

But if it be intended that the declaration of trust shall be included in the deed of conveyance, instead of the words within inverted commas, say, Trusts by deed of conveyance.

“Next hereinafter declared or expressed concerning the same, that is to say,” and see *ante*, p. 443, 509, marg. (*).

(2) If there be several debtors in copartnership to whom the premises belong, insert the words within brackets here and *post*. Several debtors.

If an incumbrancer be a party, see *ante*, p. 416, 417, notes. Incumbrancer.

If the debtor took the estate to himself and a trustee, see *ante*, p. 423, n. (28), 424, n. (32). Trustee.

If the premises be subject to any mortgage, annuity, or the like, see *ante*, p. 424, notes. Mortgage, &c.

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CREDITOR.

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of Real and Per-
sonal Estates
for Creditors.

And possessed
of the lease-
holds.

the said (*debtors*) respectively, either jointly or severally] done, occasioned, or knowingly suffered or omitted to the contrary, he the said (*debtor*) [*or* they the said (*debtors*)] at the time of the sealing and delivery of these presents, is [*or* are, or some or one of them is] lawfully and absolutely seised in his own right, and to his own use, [*or* in some or one of their own right, and to their or some or one of their own use,] of all and singular the said freehold messuages, lands, and hereditaments, as of and for a good, perfect, clear, absolute, and indefeasible estate of inheritance in fee-simple in possession (1), and in like manner seised of, or legally and equitably entitled unto the said copyhold or customary messuages, lands, and hereditaments, of a good, sure, perfect, and indefeasible estate of inheritance to him and his heirs, at the will of the lord, according to the said manor of

. AND is [*or* are] possessed of, and well entitled to all and singular the said leasehold messuages or tenements and premises, for all the residue yet to come and unexpired by effluxion of time, of the said term of years, granted by the said in part recited indenture of lease, without there being any qualification, restriction, matter or thing whatsoever, to impeach, charge,

Life estate.

(1) If the debtor be tenant for life only of the estate, see *ante*, p. 428, n. (35).

Remainder, &c.

If the conveyance be of a remainder or reversion, see *ante*, Vol. V. p. 221.

incumber, or in any wise prejudicially affect the same estates and premises, or any of them, or any part of the same respectively, other than and except as hereinbefore is expressly set forth. AND that for and notwithstanding any such act, deed, matter, or thing as aforesaid, he the said (*debtor*) now hath [*or* they the said (*debtors*) or some or one of them, now have in themselves, or] in himself, full power and lawful and absolute right and title, to grant and release the said freehold, and to surrender the said copyhold hereditaments and premises respectively, and the inheritance and possession thereof, to the use of them the said (*trustees*) their heirs and assigns, and also to assign and make over all and singular the said leasehold messuages and premises, unto them the said (*trustees*) their executors, administrators, and assigns, in the manner, for the estates and periods, and for the purposes hereinbefore expressed concerning the same respectively. AND also that it shall be lawful for them the said (*trustees*) or any or either of them, or other the trustees or trustee for the time being of the said trust estates, from time to time, and at all times hereafter during the subsistence of the said trusts, to enter into and upon, and hold and enjoy the same premises, with their appurtenances, and receive and retain the rents, issues, and profits thereof, for and upon the trusts, intents, and purposes of these presents, and also for any purchaser, mortgagee, or other person or persons to whom the said hereditaments and

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sonal Estates
for Creditors.*

And hath right
to convey.

Quiet enjoy-
ment.

**DEBTOR
AND
CREDITOR.**

*Conveyance, &c.
of Real and Per-
sonal Estates
for Creditors.*

*Free from in-
cumbances.*

*Covenant for
further assu-
rance.*

premises, or any part thereof, shall be conveyed or assured by virtue or in pursuance of the trusts hereof, to enter into and upon, and hold, retain, and enjoy the same, to and for his and their own use and benefit, freed and discharged from the said trusts, and according to the true intent and meaning of these presents, and of the conveyance or assurance which shall be made to him or them respectively, without any hinderance, interruption, claim, or demand whatsoever, from or by him the said (*debtor*) [*or them or either of them the said (debtors)*] or any person or persons whomsoever, now or hereafter claiming or entitled by, from, under, or through him, them, or any or either of them, or their or his acts, means, or defaults, (save only as aforesaid). AND that free and clear, and freely, clearly, and absolutely acquitted, exonerated, and discharged, of, from, and against all former and other grants, releases, surrenders, assignments, conveyances, assurances, estates, rights, titles, interests, trusts, charges, and incumbrances whatsoever, by him, them, or any or either of them, made, done, or knowingly occasioned or suffered, except only as hereinbefore is particularly mentioned. AND moreover, that he the said (*debtor*) [*or they the said (debtors)*, and each of them, their and each of their] his heirs, executors, and administrators, and all and every person and persons now or at any time hereafter rightfully claiming or possessing any estate, right, title, or interest, in, to, upon, or respecting the hereditaments and premises hereby granted and

released, and covenanted to be surrendered and assigned or otherwise assured respectively, or intended so to be, or any part thereof, by, from, through, under, or in trust for him or them, shall and will, from time to time, and at all times hereafter, upon every reasonable request of the said (*trustees*) or any or either of them, or other the trustees or trustee for the time being, make, do, acknowledge, levy, suffer, execute, and perfect all and every such further and other lawful and reasonable acts, deeds, surrenders, assignments, powers, authorities, conveyances, assurances, matters, and things whatsoever, for the better and more effectually or satisfactorily granting, releasing, surrendering, assigning, and assuring the same premises, or any of them, or any part of the same respectively, unto or to the use of the said trustees or trustee, or enabling them, or him, to get and receive the produce and proceeds thereof, upon or for the trusts and purposes aforesaid, and for conveying, confirming, and assuring the same, or any part thereof, to any purchaser, mortgagee, or other person or persons to whom they or he shall convey or assure, or contract for the conveyance or assurance of the same, in pursuance and by virtue of these presents (1). AND (2) in

DEBTOR
AND
CREDITOR.

Conveyance, &c.
of Real and Personal Estates
for Creditors.

Covenant by
trustees to pay
rent and indemnify debtor.

(1) If the life of the debtor is intended to be insured, see *ante*, p. 494.

Assurances.

(2) If the trusts of the money to arise by sale, &c. are declared by a separate deed, this covenant and the following proviso may be inserted in such deed instead of here.

Trusts by separate deed.

DEBTOR
AND
CREDITOR.

*Conveyance, &c.
of Real and Per-
sonal Estates
for Creditors.*

To hold to the
trustees abso-
lutely.

Power of attor-
ney to receive
debts.

singular other the personal estate, property, and effects, of what nature or kind soever, of or belonging, or due, or owing to him the said (*debtor*), together with all books of account, vouchers, and other papers and writings in anywise relating to or concerning the same, and all the estate, right, title, interest, property, claim, and demand whatsoever, of him the said (*debtor*) of, in, or to the same; together with all powers, remedies, and means of him the said (*debtor*) both at law and in equity, for receiving, recovering, and enforcing payment of the same. TO HAVE AND TO HOLD, receive, perceive, take, and enjoy, all and singular the stock in trade, debts, securities, and other the personal estate, effects, and premises lastly hereby assigned, or otherwise assured or intended so to be, unto them the said (*trustees*) their executors, administrators, and assigns, wholly and absolutely as if the same were their own proper goods, chattels, and effects; But nevertheless UPON THE TRUSTS, and to and for the ends, intents, and purposes hereinafter declared or expressed concerning the same. AND for the better enabling the said (*trustees*) their executors, administrators, and assigns, to recover and receive, the said debts, estates, and effects, HE the said (*debtor*) HATH made, constituted and appointed, and by these presents DOTH, &c. (*add usual letter of attorney*) (1).

(1) See *ante*, p. 564.

AND it is hereby expressly agreed and declared by and between the said parties to these presents, that the said (*trustees*) and their heirs shall stand and be seised, possessed of, interested in, and entitled to all and singular the freehold, copyhold, and leasehold messuages, lands, tenements, and hereditaments, and personal estate, property, and effects, hereinbefore particularly mentioned or described, and hereby granted, released, covenanted to be surrendered and assigned respectively, or intended so to be, upon the trusts and for the several ends, intents, and purposes hereinafter declared, expressed, or referred unto concerning the same (that is to say) UPON TRUST that they the said (*trustees*) and the survivors and survivor of them, or the heirs, executors, or administrators of such survivor, and their or his assigns, shall and do (as soon as conveniently may be after the execution of these presents), of their or his own proper authority, and without the concurrence of, or any further power or authority from the said (*debtor*) his heirs, executors, or administrators, than is hereby given, sell and dispose of, and grant, release, surrender, assign, and assure, either absolutely or by way of mortgage, in fee-simple, or for any term or number of years, and either together or in parcels, and by public or private sale, or in such other way or manner as they or he shall think fit, ALL and singular or any part of the same freehold, copyhold, and leasehold messuages, lands, and hereditaments, with their and every of their appurtenances, for such price

DEBTOR
AND
CREDITOR.

*Conveyance, &c.
of Real and Per-
sonal Estates
for Creditors.*

Declaration of
trust.

To raise money
by sale, &c. for
purposes after
mentioned.

DEBTOR
AND
CREDITOR.

*Conveyance
to Auctioneer
for Sale.*

No. X.

*Conveyance of Estates to an Auctioneer, in Trust to
sell for Repayment of Money already or to be
hereafter advanced by him.*

Variations where Incumbrancers are Parties.

*Also where the Money is advanced by two or more
Auctioneers in Copartnership.*

Other Variations as in Margin below (1).

THIS INDENTURE, made the day of
 day of , in the year of the reign,
&c. , and in the year of our Lord .
BETWEEN (*the debtor*) of, &c. of the one part,
and (*the auctioneer*) [*or auctioneers*] of, &c. of
the other part (2). [WHEREAS the said (*debtor*)

Incumbrancer
party.

(1) See also notes and variations to No. IV. *ante*, p. 398, *et seq.*

(2) If a mortgagee or other incumbrancer be party, make him of the second and the auctioneer of the third part, and recite the incumbrance, as,

“ WHEREAS by indenture of lease and release bearing date respectively on or about the day of , in the year , the indenture of release being of three parts, and made or expressed to be made between the said (*debtor*) of the one part, and the said (*mortgagee*) (*or as the case may be*) of the other part, the manor and other hereditaments hereinafter described to be situate in the county of , with their rights, members, and appur-

is indebted, (*if the case be so*) to the said (*auctioneer*) in divers sums of money at different times advanced by him the said (*auctioneer*) unto or for the use of the said (*debtor*) amounting in the whole to the sum of £ , which the said (*debtor*) doth hereby acknowledge. AND] WHEREAS the said (*debtor*) is desirous of selling and disposing of the manor and hereditaments hereinafter described by public auction, and hath authorised and instructed the said (*auctioneer*) to put up the same by public auction as soon as conveniently may be. AND whereas the said (*debtor*) hath requested the said (*auctioneer*) to advance and lend to him the [further] sum of £ , previously to such sale, which the said (*auctioneer*) hath agreed to do, on having such conveyance of the said hereditaments conveyed unto

DEBTOR
AND
CREDITOR.

Conveyance
to Auctioneer
for Sale.

tenants, were in consideration of £ , paid to the said (*debtor*) by the said (*mortgagee*) conveyed and assured by the said (*debtor*) unto and to the use of the said (*mortgagee*) his heirs and assigns for ever; Subject nevertheless to a proviso or agreement contained in the said indenture of release for redemption of the premises on repayment of the said sum of £ , with interest for the same at the rate and at a time therein mentioned in that behalf and now long since past. AND WHEREAS the said sum of £ was not paid to the said (*mortgagee*) at the time in the said in part recited indenture appointed for payment thereof, and the same still remains due to the said (*mortgagee*) upon or by virtue of the said mortgage security, together with the sum of £ , for arrears of interest thereupon, up to the day of last past, he the said (*debtor*) doth hereby acknowledge;" AND WHEREAS, &c. as above.

DEBTOR
AND
CREDITOR.

*Conveyance
to Auctioneer
for Sale.*

WITNESS, that
mortgagee and
debtor grant,
&c. to the auc-
tioneer.

and to the use of him the said (*auctioneer*) upon the trusts, and for the ends, intents, and purposes hereinafter declared or expressed concerning the same. Now THIS INDENTURE WITNESSETH, that in order to carry into effect the intention of the said parties, and in consideration of the sum of £ , [being due and owing to the said (*auctioneer*) from the said (*debtor*) as hereinbefore mentioned, and in consideration of the further sum of £] of lawful current money of that part of the United Kingdom of Great Britain and Ireland called England to the said (*debtor*) well and truly paid by the said (*auctioneer*) immediately before the execution of these presents, (the receipt of which said [two several sums of £ and £ , making together the] sum of £ , the said (*debtor*) doth hereby acknowledge, and of and from the same and every part thereof, doth acquit, release, and for ever discharge the said (*auctioneer*) his heirs, executors, administrators, and assigns, by these presents). AND for the purpose of raising a fund to pay off and discharge [the said principal sum of £ , so due and owing to the said (*mortgagee*) upon or by virtue of the mortgage or security made to him as aforesaid, and all interest now and henceforth to become due for the same, and also for the repayment to the said (*auctioneer*)] as well of the said sum of £ , and all interest which shall become due for the same, as also of all or any other sum and sums of money which shall or may be hereafter advanced or lent by the

said (*auctioneer*) to the said (*debtor*) and the interest thereof, HE the said (*debtor*) HATH granted, bargained, sold, aliened, and released (1), and by these presents DOTH grant, bargain, sell, alien, and release unto the said (*auctioneer*) and his heirs, ALL, &c. (2) and all houses, &c. and the reversion, &c. (*add as usual*) (3) (which said hereditaments are now in the actual possession of the said (*auctioneer*) by virtue of a bargain and sale thereof made to him by the said (*mortgagee*) and (*debtor*) in consideration of five shillings paid to each of them by the said (*auctioneer*) by indenture bearing date on the day next before the day of the date, and executed before the execution of these presents for one whole year, to be computed from the day next before the day of the date of same indenture of bargain and sale, and by force of the statute made for transferring uses into possession), and all the estate and deeds, &c. (4). TO HAVE AND TO HOLD the said messuages, lands, tenements, and hereditaments, and all and singular other the premises hereby released or otherwise assured, or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenants, unto the said (*auctioneer*) his heirs

DEBTOR
AND
CREDITOR.

*Conveyance
to Auctioneer
for Sale.*

To HOLD to the
use of auctioneer
upon trusts after
mentioned.

(1) If an incumbrancer join, add,

“ And the said (*mortgagee*, &c.) HATH ratified and confirmed, and by these presents DOTH,” &c.

(2) See *ante*, p. 404, n. (8).

(3) See and add as *ante*, p. 498.

(4) See and add as *ante*, p. 499.

Incumbrancer
joining.

Parcels.

DEBTOR
AND
CREDITOR.

*Conveyance
to Auctioneer
for Sale.*

Declaration of
trusts to sell.

and assigns for ever, to the use of him the said (*auctioneer*) his heirs and assigns for ever; But nevertheless upon the trusts, and for the ends, intents, and purposes hereinafter declared or expressed concerning the same (1). AND it is hereby declared and agreed by and between the said [(*mortgagee*)] (*debtor*) and (*auctioneer*) to be the true intent and meaning of them and of these presents, and in particular the said [(*mortgagee*) and] (*debtor*) do respectively direct and appoint, and the said (*auctioneer*) doth consent and agree that he the said (*auctioneer*) his heirs and assigns, shall henceforth stand and be seized or possessed of, interested in, and entitled to the said messuages, lands, tenements, and hereditaments hereby released, or otherwise assured or intended so to be, and every part and parcel of the same, with their and every of their rights, members, and appurtenances, UPON TRUST that he the said (*auctioneer*) his heirs or assigns, of his or their own proper authority, without any further consent or concurrence of the said (*debtor*) (2), his heirs, executors, administrators, or assigns, do and shall at any time or times hereafter when he or they, in his or their discretion shall think fit, make sale of and absolutely dispose of the same messuages, lands, tenements, and hereditaments

Incumbrancer.

(1) If an incumbrancer join, add a covenant by him that he has not incumbered, &c. as *ante*, p. 409.

Incumbrancer.

(2) If an incumbrancer join, add,

“ Or (*mortgagee* &c.) or either of them, or either of their heirs,” &c.

or any part thereof, and the fee-simple and inheritance of the same, either altogether, and in one lot, or by parcels, and in several lots, and either by public auction or by private contract; or partly by public auction, and partly by private contract, as the said (*auctioneer*) his heirs or assigns, shall think expedient and most advantageous, with liberty, if he or they shall think fit, to buy in all or any part of the said hereditaments, and resell or again put up to sale the same, either by public auction or private contract, without being liable to answer for any loss or diminution in price which may be thereby occasioned. AND also do, shall, and may convey and assure the said premises, when sold, with the appurtenants, unto the person or persons who shall agree to become the purchaser or purchasers thereof, or to such other person or persons as he or they shall direct or appoint. AND upon this further trust, (1) that the said (*auctioneer*) his heirs and assigns (2), do and shall, by, with, and out of the money which shall arise or be produced by or from such sale or sales respectively, as aforesaid, and also by, with, and out of the rents and profits (if any) of the said

DEBTOR
AND
CREDITOR.

*Conveyance
to Auctioneer
for Sale.*

And out of produce pay expenses.

(1) If the trusts of the money are declared by a separate deed. See *ante*, p. 509. Trusts of money.

(2) If there be two or more auctioneers, add here, and throughout, Auctioneers' co-partners.

“ They the said (*auctioneers*) and the survivor of them, and the heirs, executors, and administrators, of such survivor, and their and his assigns.”

DEBTOR
AND
CREDITOR.

*Conveyance
to Auctioneer
for Sale.*

messuages, lands, tenements, and hereditaments which shall be received by him and them in the mean time, and until any such sale, in the first place deduct, retain, and satisfy, and pay unto and for himself or themselves the costs, charges, and expenses of and attending the execution of the trusts hereby reposed in him and them, including the customary charges as an auctioneer, and the money which he shall disburse, expend, or lay out for the chief rents (if any) and taxes and repairs of the said premises, and for the insurance of the building thereof against loss or damage by fire, or in or about any suit or suits at law or in equity for obtaining possession of the said premises, or any part thereof, and enforcing the performance of any contract or contracts to be entered into with any person or persons who shall agree to become the purchaser or purchasers thereof, or of any of them, and in the next place do and shall by and out of the rents and purchase money to arise and be produced as aforesaid (1), pay unto and for himself and themselves the said principal sum of £ , (the amount of the said two several sums of £ and £ so advanced, lent, and paid by the said (*auctioneer*) as aforesaid) and the interest from the day of the date of these presents, at the rate of £5 per cent. per annum, for so much thereof as shall from

Incumbrancer.

(1) If an incumbrancer join; add, as *ante*, p. 444.

time to time remain unpaid, clear of all deductions for taxes, or on any other account whatsoever, and also (clear of such deductions as aforesaid) all and every other sum and sums of money (if any) which at any time, and from time to time hereafter, shall be advanced or lent by the said (*auctioneer*) to the said (*debtor*) on bill, bond, note of hand, or on any other contract or security whatsoever, with interest after the rate aforesaid, for the same sums respectively from the several times at which the same respectively shall be advanced. AND upon this further trust, that the said (*auctioneer*) his heirs and assigns, do and shall, after raising by the ways and means aforesaid, and paying or retaining the said principal monies and interest, costs, charges, disbursements, and expenses in the manner aforesaid, pay the residue or surplus (if any) of the money which shall remain in his or their hands unapplied to any of the purposes aforesaid, unto the said (*debtor*) his executors, administrators, or assigns, as part of his or their personal estate, and upon or for no other trust, intent, or purpose whatsoever. AND it is hereby declared and agreed by and between the said (*debtor*) and (*auctioneer*) (1) and they do hereby for themselves respectively, and their respective heirs, executors, administrators, and assigns, direct and appoint that the per-

DEBTOR
AND
CREDITOR.

*Conveyance
to Auctioneer
for Sale.*

Further trust to
pay surplus to
debtor.

Declaration that
receipt of auc-
tioneer shall
discharge pur-
chasers.

(1) If an incumbrancer join, add,

Incumbrancer.

“ And the said (*mortgagee*) or (*as the case may be*).”

DEBTOR
AND
CREDITOR.

Conveyance
to Auctioneer
for Sale.

son or persons who shall become the purchaser or purchasers of all or any part of the messuages, lands, tenements, and hereditaments hereby released or otherwise assured, or intended so to be, and pay his, her, or their purchase money, or any part thereof to the said (*auctioneer*) his heirs, executors, administrators, or assigns, or to his or their agent or agents, or under his or their direction, shall not be obliged to see to the application of the same money, or any part thereof, or be answerable or accountable for the misapplication or nonapplication thereof, and that all receipts which shall be given for the said money, or any part thereof, by the said (*auctioneer*) his heirs, executors, administrators, or assigns, or his or their agent or agents, or by any other person or persons to whom the same money shall be paid under his or their direction, shall be good and sufficient discharges for the sum or sums of money which therein or thereby respectively shall be acknowledged to be or to have been received. AND that every sale which shall be made, and contract for sale which shall be entered into, and conveyance which shall be executed by the said (*auctioneer*) his heirs or assigns, shall be binding and conclusive on the said (*debtor*) (1) his heirs, executors, and administrators (2). AND the said (*debtor*) doth

Incumbrancer.

(1) If an incumbrancer join, say,

“And the said (*mortgagee*, &c.) and each of them and their respective heirs,” &c.

Auctioneers
partners.

(2) If there were two or more auctioneers in copartnership, which is a common case, add,

“AND the said (*auctioneers*) do hereby severally declare

hereby declare and direct that immediately after the execution of these presents (unless he shall at any time hereafter expressly declare the contrary by some writing under his hand) all the estate, right, title, and interest of him the said (*debtor*) in and to the said messuages, lands, tenements, and hereditaments, and also the rents, income, and produce thereof, in the mean time and until the same shall be sold under the trusts hereinbefore contained shall be considered as or in the nature of personal property, for the benefit of him the said (*debtor*) his executors, administrators, and assigns, and that as between his heirs, and his executors and administrators, the executors and administrators of him the said (*debtor*) shall be entitled to the same trust monies, rents, income, and produce, in preference to and in exclusion of

DEBTOR
AND
CREDITOR.

*Conveyance
to Auctioneer
for Sale.*

Estate to be
personalty.

that the said sum of £ , (the amount of the said two several sums of £ , and £ , so advanced and lent by them as aforesaid) hath been advanced by them out of money belonging to them on their partnership account, and do hereby direct and appoint that in case either of them shall die in the lifetime of the other of them, and during the continuance of the same sum of £ , or any part thereof, on this present security, all the principal money and interest then due and owing shall belong and be paid to the survivor of them the said (*auctioneers*) his executors, administrators, or assigns, as part of their partnership effects, without the consent or concurrence of the executors, administrators, or assigns of such one of them the said (*auctioneers*) as first shall depart this life, any law or usage to the contrary notwithstanding."

DEBTOR
AND
CREDITOR.

*Conveyance
to Auctioneer
for Sale.*

Covenant to
pay.

the heirs at law of him the said (*debtor*) although such sale or sales shall not be made until after his decease. AND the said (*debtor*) for himself, his heirs, executors, and administrators, doth covenant and agree with the said (*auctioneer*) his executors, administrators, and assigns, that he the said (*debtor*) his heirs, executors, or administrators, shall and will at any time after the day of next ensuing the date of these presents, on demand made to him or them thereof, well and truly pay or cause to be paid unto the said (*auctioneer*)(1) his executors, administrators, or assigns, the said sum of £ , and also all and every other sum and sums of money which then, or from time to time, shall be due or owing by the said (*debtor*) to the said (*auctioneer*) his executors or administrators, with interest for the same respectively, after the rate aforesaid, without any deduction or abatement, and without fraud or further delay. AND, &c. (*Covenant by owner for the title, indemnity to auctioneer, &c. &c.*)(2). IN WITNESS, &c.

Two or more
auctioneers.

(1) If there be two or more auctioneers in copartnership, add,

“ Or the survivor of them, or the executors or administrators of such survivor.”

(2) As *ante*, p. 422, 501.

Life insurance.
Policy.
Privilege.

If it is intended to insure the debtor's life, see *ante*, p. 494.
If a subsisting life policy is to be assigned, see *post*, rider (A).
If the debtor be privileged, see *ante*, Vol. V. p. 232, and *ante*, p. 495.

DEBTOR
AND
CREDITOR.

Conveyance
to Auctioneer
for Sale.

(A) *Assignment of Policy of Assurance on the Life of the Debtor.*

Variations where it is on the life of some other person.

AND whereas by a certain instrument or policy of insurance under the hands and seals of certain directors of the insurance office or company in bearing date on or about the day of , in the year , and numbered , the said office or company, in consideration of the yearly sum of £ to be paid by the said (*debtor*) during his natural life, [or during the natural life of A. B. of, &c. *as the case may be*] insured the payment to the executors, administrators, or assigns, of him the said (*debtor*) within calendar months next after his decease [*or to him the said (debtor) his executors, administrators, or assigns, within three calendar months next after the decease of the said A. B.*]; AND whereas it has been agreed that the benefit of the said policy shall be assigned to the said (*trustees*) as a further security for the payment of the creditors of the said (*debtor*) in case of his decease during the subsistence of the aforesaid trusts. NOW THIS INDENTURE FURTHER WITNESSETH, that in pursuance of the said last mentioned agreement, HE the said (*debtor*) HATH bargained, sold, assigned, transferred, and set over, and by these presents DOTH bargain, sell, assign, transfer, and set over, unto the said (*trustees*) their executors, administrators, and assigns, ALL that the said in part recited instrument or policy of insurance so granted to or taken out by him the said (*debtor*), from or by the said office or company, as hereinbefore is mentioned, AND all and every sum or sums of money thereby insured and to become due and payable by virtue thereof, and all other benefit and advantage to be derived or accrue from the same, and all the estate, right, title, and interest, property, claim, and demand whatsoever, of him

Recital of
policy.

WITNESS,
debtor assigns
policy to trustees.

DEBTOR
AND
CREDITOR.

*Conveyance
to Auctioneer
for Sale.*

To hold upon
trusts, &c.

Letter of at-
torney.

the said (*debtor*), of, in, or to the same, and every or any part thereof, and all powers and remedies for recovering the same, TO HAVE AND TO HOLD, receive, take, and enjoy the said instrument or policy of insurance, sum and sums of money, and all and singular other the premises lastly hereby assigned or otherwise assured, or intended so to be, unto and by them the said (*trustees*) their executors, administrators, and assigns, in as full and beneficial manner, to all intents and purposes, as he the said (*debtor*) [his executors or administrators] could or might have had, holden, or enjoyed the same if these presents had not been made; but nevertheless upon the same or the like trusts, and for the same or the like ends, intents, and purposes, as hereinbefore are declared, expressed, or intended, concerning the money to arise from the sale or other disposition of the messuages, &c. hereinbefore granted and released, or otherwise assured, or as nearly thereto as circumstances will admit; AND he the said (*debtor*) by these presents DOth name, constitute, and appoint the said (*trustees*) and each of them, jointly and severally, and other the said trustees or trustee for the time being, the true and lawful attorney and attornies, irrevocable of him the said (*debtor*) and of his executors and administrators, and in the name or names of him or them, or otherwise as may be expedient, to ask, demand, sue for, recover, and receive, and sign and give effectual discharges for all and every sum and sums of money which shall or may at any time hereafter become due or payable on or by virtue of the said recited instrument or policy of insurance, and to sign the names or name of him or them, or of the said trustees or trustee, to or for any receipts or discharges for the same, which said receipt or discharge shall be as good and effectual to all intents and purposes as if the same had been signed by him the said (*debtor*) [or by the executors or administrators of him the said (*debtor*)] and otherwise act therein as to them the said trustees or trustee shall seem meet; he the said (*debtor*) for himself, his executors and administrators, hereby ratifying and confirming, and agreeing to ratify and confirm all and whatsoever the said trustees or trustee shall lawfully do or cause

to be done in or about the premises by virtue of these presents, with full power, one or more attorney or attornies under him or them, to substitute, depute, and appoint, for the purposes aforesaid, or any of them. AND further, that he the said (*debtor*) shall and will, at any time or times hereafter, at the request of the said trustees or trustee, or any or either of his said creditors, parties hereto, their or his executors, administrators, or assigns, (upon having reasonable notice given to him thereof) appear in person at the said insurance office, or any other office or offices, or place or places of insurance, within the city of London or Westminster, and also if and when thereunto required, procure and produce unto any such office or offices, place or places, notice in writing of his place of abode, together with satisfactory certificates or other documents of his being alive, and of the state of his health, either for the purpose of enabling them, or any or either of them, to keep on foot, or renew, or establish the policy of assurance expressed to be hereinbefore assigned, or to insure any further or other sum or sums of money upon the life of him the said (*debtor*) if he, they, or any or either of them shall think fit; and moreover that he the said (*debtor*) shall not, nor will, at any time hereafter during the subsistence of any of the trusts of these presents (the last thereof, relative to the surplus estate, only excepted) do, or cause to be done, any act or thing whatsoever whereby the policy of assurance hereby assigned, or any future or other policy of assurance to be granted, or taken out, as aforesaid, shall or may become impeached or impeachable, or void or voidable, or the benefit thereof lost or diminished. PROVIDED ALWAYS, and it is hereby declared and agreed, by and between the several parties hereto, that no sale, mortgage, or other disposition of the policy of assurance hereinbefore assigned, or any interest therein shall be made, or contracted to be made, with or to any person or persons whomsoever during the lifetime of the said (*debtor*) without the consent in writing of him the said (*debtor*) first obtained for that purpose:—[or (*if so agreed*) unless and until all and singular the messuages, lands and hereditaments and other the trust property aforesaid, shall be

DEBTOR
AND
CREDITOR.

*Conveyance
to Auctioneer
for Sale.*

Debtor will
appear at in-
surance office.

Restriction as to
disposition of
policy.

DEBTOR
AND
CREDITOR.

*Conveyance
to Auctioneer
for Sale.*

wholly sold and disposed of under the trusts of these presents, and the produce thereof shall be found insufficient for satisfying the said trusts, nor in either of the said cases, until six calendar months' previous notice in writing of such sale, or intended sale, or other disposition thereof, shall be given to him the said (*debtor*) under the hands or hand of the said trustees or trustee,] and which sale, or exposal to sale, shall be by public auction, and not by private contract.

DEBTOR
AND
CREDITOR.

No. XI.

Conveyance of
Estates to pay off
Incumbrances,
&c.

Conveyance of Estates by a Debtor to Trustees, for the Settlement of his Affairs, on going abroad, adapted to various Species of Property, Part under Settlement (1).

THIS INDENTURE, made the day of ,
in the year of the reign, &c. , and in
the year of our Lord . BETWEEN (*the debtor*) of, &c. of the one part, and
trustees) of, &c. of the other part. WHEREAS
the said (*debtor*) is seised of divers messuages,
lands, tenements, and hereditaments, situated in
the counties of , during the term of his
natural life, without impeachment of waste, under
or by virtue of a settlement made on his marriage
with , his present wife, (*or otherwise as
the case may be*) (2), and is seised in fee-simple
to him and his heirs of divers other messuages,
lands, tenements, and hereditaments, situated in
the said several counties of , or some

Recital of debtor
being seised of
certain estates
for his wife.

Of other estates
in fee.

(1) See also the variations and notes to No. IV. *ante*, p. 398, Variations.
et seq.

If any mortgagee or other incumbrancer be party, see *ante*, Incumbrancers.
No. IV. p. 399, *et seq.* margins, "Incumbrancer."

(2) See recitals of other titles, &c. *ante*, p. 400, n. (4), and Recitals.
post, rider (A), p. 635.

DEBTOR
AND
CREDITOR.

Conveyance of
Estates to pay off
Incumbrances,
&c.

Of personal
estate.

Of being in-
debted to various
persons.

WITNESS, that
in order to pay
said debts, &c.

of them, all which (exclusive of the castle and capital messuage or mansion-house of , and the park, gardens, orchards, and the pleasure grounds which are in his own occupation), are let at several yearly rents, amounting in the whole, one year with another, to the sum of £ , or thereabouts, but are subject to the payment of an annuity or yearly rent-charge of £ , to the said his wife, for her jointure, and of certain other annuities, and debts, and incumbrances granted or created respectively by the said (*debtor*). AND WHEREAS the said (*debtor*) is also possessed of or entitled to certain chattel and personal estates, consisting of leasehold messuages, household goods, furniture, debts, and arrears of rent due to him. AND whereas the said (*debtor*) is indebted to various persons in different sums of money, secured by judgments and bonds, with arrears of interest for the same, and to others, on simple contract debts. AND whereas the said (*debtor*) is about to leave the United Kingdom and reside abroad, but being desirous of previously making a provision for discharging the said several incumbrances and debts (subject only to an annual allowance to himself for his support) hath proposed and agreed, with the privity of the major part of his creditors, to grant and convey to the said (*trustees*) all his said several estates, property, and effects, upon the several trusts, and for the several intents and purposes, and with the several powers hereinafter declared or expressed of or concerning the same. NOW THIS INDENTURE

WITNESSETH, that in pursuance of the said proposal and agreement, and for carrying the same into execution [and in consideration of the sum of ten shillings of lawful money of the United Kingdom of Great Britain and Ireland, to the said (*debtor*) in hand well and truly paid by the said (*trustees*) at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged] HE the said (*debtor*) HATH granted, bargained, sold, aliened, released, and confirmed, and by these presents, BOTH grant, bargain, sell, alien, release, and confirm unto the said (*trustees*) and their heirs, ALL that the manor, &c. and all houses, &c. and the reversion, &c. and which said honours, &c. are now in the actual possession of the said (*trustees*) by virtue, &c. and all the estate, &c. and all deeds, &c. (*insert usual general words, clauses, &c.*) (1). TO HAVE AND TO HOLD such parts of the honours, manors or lordships, messuages, lands, tenements, and hereditaments hereinbefore granted and released, or otherwise assured or intended so to be, as he the said (*debtor*) is seised of for his life only, with their and every of their rights, royalties, members, and appurtenances, unto them the said (*trustees*) and their heirs, to the use and behoof of them the said (*trustees*) their heirs and assigns, during the life of him the said (*debtor*) without impeachment of waste. AND TO HAVE AND TO HOLD such of the honours, manors or lordships, messuages, lands, tenements, and he-

DEBTOR
AND
CREDITOR.

Conveyance of
Estates to pay off
Incumbrances,
&c.

The debtor
grants, &c. his
said freehold
estates to trustees.

TO HOLD life
estate.

And fee-simple
estates.

(1) See these *ante*, p. 497, *et seq.*

DEBTOR
AND
CREDITOR.

Conveyance of
Estates to pay off
Incumbrances,
&c.

Upon the trusts
after mentioned.

FURTHER
WITNESS, that
debtor assigns
personalities.

reditaments hereinbefore granted and released, or otherwise assured, or intended so to be, as the said (*debtor*) is seised of or entitled to in fee-simple, or for any estate of inheritance unto the said (*trustees*) and their heirs, to the use and behoof of them the said (*trustees*) their heirs and assigns for ever; But nevertheless as to all and every the said hereditaments, upon the trusts, for the intents and purposes, and under and subject to the powers and provisos hereinafter contained, declared, or expressed, concerning the same (1). AND THIS INDENTURE FURTHER WITNESSETH, that in further pursuance of the said proposal and agreement, He the said (*debtor*) HATH bargained, sold, assigned, transferred, and set over, and by these presents DOTN bargain, sell, assign, transfer, and set over unto the said (*trustees*) their executors, administrators, and assigns, ALL that the said sum of £ now due to him the said (*debtor*) on a West India security as aforesaid (*or as the case may be*), and interest now due and hereafter to become due and payable for or in respect thereof, and all other the debts and sums of money; and arrears of rents now due or owing, and hereafter to become payable to him the said (*debtor*) from any person or persons, and on any account whatsoever. AND ALSO all the household goods, furniture, chattels, personal

Copyholds.

(1) If part of the premises be copyhold, add as *ante*, p. 591, or *post*, rider (B), p. 636.

Leaseholds.

If leasehold premises be also assigned, add as *ante*, p. 593.

Rents.

If the rents also be assigned, see *ante*, p. 413, n. (21).

estate, and effects, of or belonging to him the said (*debtor*), and all the right, title, and interest of him the said (*debtor*) of, in, and to the same and every part thereof respectively. To HAVE AND TO HOLD the said sum of £ , and the interest now due and hereafter to become payable in respect thereof, and other the said debts, sums of money, and arrears of rents, household goods, furniture, chattels, personal estate, and effects, and all and singular other the premises hereby bargained, sold, and assigned, or lastly assured, or intended so to be, and every part thereof, unto the said (*trustees*) their executors, administrators, and assigns; But nevertheless upon the trusts, for the intents and purposes, and under and subject to the powers and provisos hereinafter declared or expressed concerning the same. AND, &c. (1). AND for the better enabling the said (*trustees*) their heirs, executors, administrators, and assigns, to perform the several trusts hereby declared, or created, or intended to be by these presents vested in them, he the said (*debtor*) hath made, nominated, constituted, appointed, and in his place and stead put, and by these presents doth irrevocably make, nominate, constitute, appoint, and in his place and stead put the said (*trustees*) and the survivors and survivor of them, and the heirs, executors, administrators, and assigns of such survivor, his true,

DEBTOR
AND
CREDITOR.

Conveyance of
Estates to pay off
Incumbrances,
&c.

To HOLD to the
trustees, their
executors, &c.

Upon the trusts
after mentioned.

General power
of attorney to
manage all the
concerns of the
debtor.

(1) Here may be inserted such trusts for sale, &c. as may accord with the agreement of the parties, as *ante*, p. 610, or *ante*, pp. 407. 409.

DEBTOR
AND
CREDITOR.

*Conveyance of
Estates to pay off
Incumbrances,
&c.*

Collect rents.

lawful, and undoubted attorneys and attorney (1) for him the said (*debtor*) and in his name, or in the names or name of them the said (*trustees*) and the survivors and survivor of them, and the heirs, executors, administrators, and assigns of such survivor (but upon the trusts, and for the intents and purposes hereinafter declared or expressed concerning the same) to ask, demand, sue for, recover, and receive the said sum of £ , and the interest thereof, and all other debts, sums of money, and rents, and arrears of rent now due, or which shall become due or payable to him the said (*debtor*); and all goods, chattels, and effects which now are or hereafter shall be belonging to him the said (*debtor*) or any person or persons in trust for him, and on receipt thereof, or of any part thereof, for him the said (*debtor*) and in his name, or in the names or name of them the said (*trustees*) and the survivors and survivor of them, or of the executors, administrators, or assigns of such survivor, good and sufficient receipts, acquittances, releases, and other discharge, to give, sign, and execute for the same; and on non-payment or non-delivery of them, or any of them, to bring, commence, carry on, and prosecute any action or actions, suit or suits, and to take out and execute any writ or writs of execution, and to make any distress or distresses, and to dispose of such distress or distresses accord-

Power of
attorney.

(1) See a very full power of attorney for similar purposes to these, 2 Wilde's Sup. No. CXI. p. 157, which may be substituted in the room of this, if thought fit.

ing to law, and to make any conusance or conu-
sances, avowry or avowries, of or concerning such
distress or distresses, and to examine, state, settle,
adjust, pass, and sign any account or accounts
which is, or are, or shall be depending between him
the said (*debtor*) and any person or persons whom-
soever, and to receive and give a receipt or re-
ceipts for the balance or balances of such account
or accounts, and to compromise, adjust, and settle
any action or actions, suit or suits, and all other
matters, accounts, and things, which is, or are, or
shall be depending between him the said (*debtor*)
and any person or persons whomsoever. AND also
to borrow and take up at interest any sum or sums
of money for enabling them or him the said trustees
or trustee, to perform the several trusts hereby
created or declared; and for securing the payment
of the sum or sums of money so to be borrowed,
and the interest thereof, for and in the name of
him the said (*debtor*) or in the name or names of
them the said (*trustees*) or of the survivor of them,
or the heirs, executors, administrators, or assigns
of the survivor, to grant, convey, and assure the
hereditaments and premises hereinbefore granted
and released, or otherwise assured or intended
so to be, or any part thereof, to the person
or persons who shall be willing to advance
such sum or sums of money, his, her, or their
heirs, executors, administrators, and assigns (but
subject to proper conditions of redemption) and
for and on behalf of him the said (*debtor*) his heirs,
executors, and administrators, to enter into the

DEBTOR
AND
CREDITOR.

Conveyance of
Estates to pay off
Incumbrances,
&c.

Settle accounts.

Borrow money
on mortgage.

DEBTOR
AND
CREDITOR.

*Conveyance of
Estates to pay off
Incumbrances,
&c.*

To grant leases.

To sell house-
hold goods, &c.

And execute
deeds.

usual covenants for repayment of the money advanced, and for the title, quiet enjoyment, and further assurance; AND also to demise and lease, all and every or any of the said hereditaments and premises, with the appurtenances (except the capital mansion-house called _____, with the appurtenances thereto belonging,) to any person or persons, for any term or number of years not exceeding ninety-nine years absolutely, or for any number of years determinable on the dropping of any life or lives, at such yearly rent or rents as in their or his judgment ought to be had for the same, and either with or without any fine or fines on the granting of any such lease or leases, so as every of such leases be under the restrictions usually contained in leases of a like kind; AND for him the said (*debtor*) and in his name, or in the names or name of them the said (*trustees*) or of the survivor of them, or their executors, administrators, or assigns of the survivor, to bargain, sell, and assign all and every or any of the household goods, furniture, chattels, personal estate, and effects of him the said (*debtor*) either altogether or in parcels, and by public sale or auction, or by private sale, for such price or prices, or sum or sums of money as can be reasonably had or gotten, or as they or he shall think sufficient for the same. AND likewise for all and every or any of the purposes aforesaid, or for any other purpose whatsoever, to sign, seal, and as his or their act and acts, deed or deeds, or the act or acts, deed or deeds of him the said (*debtor*) to deliver or otherwise well and sufficiently

to execute any legal or other conveyance, assurance, writing or writings whatsoever, and to enter into all such proper covenants and agreements, as to them the said trustees, or the survivors or survivor of them, or the heirs, executors, administrators, or assigns of such survivor, shall seem meet, or as he or they shall be advised; and generally to make, do, execute, transact, and perform all or any other acts, deeds, matters, and things whatsoever, relating to or concerning the said (*debtor*) and his affairs as fully and effectually to all intents and purposes whatsoever, as he the said (*debtor*) might or could do or have done in his own proper person if these presents had not been made; he the said (*debtor*) hereby giving and granting unto the said (*trustees*) and the survivors and survivor of them, and the heirs, executors, administrators, and assigns of such survivor, his full and whole power and authority in, about, or in relation thereto, and to every or any of them, and promising and agreeing to ratify and confirm, and to hold for ratified and confirmed, all and whatsoever they the said (*trustees*) or the survivors or survivor of them, or the heirs, executors, administrators, or assigns of such survivor, shall do or cause to be done in or about the same respectively. AND it is hereby expressly declared and agreed by and between the parties to these presents, and it is the true intent and meaning of them, and of these presents, that the several hereditaments and premises hereinbefore granted and

DEBTOR
AND
CREDITOR.

Conveyance of
Estates to pay off
Incumbrances,
&c.

Declaration of
trusts.

DEBTOR
AND
CREDITOR.

Conveyance of
Estates to pay off
Incumbrances,
&c.

Trust to pay
expenses.

released, as well during the life of the said (*debtor*) as in fee-simple, to them the said (*trustees*) their heirs and assigns, and that the said leasehold premises, and household goods, furniture, debts, personal estate and effects hereinbefore bargained and sold or assigned unto the said (*trustees*) their executors, administrators, and assigns, are and shall respectively be vested in them and every of them upon the several trusts for the several intents and purposes, and under and subject to the several powers and provisos hereinafter contained, declared, or mentioned concerning the same, (that is to say) UPON trust (1) [that they the said (*trustees*) and the survivors and survivor of them, and the heirs, executors, administrators, and assigns of the survivor, do, and shall, or may, by, with, and out of the money to arise by sale of the hereditaments and premises hereinbefore granted and released, or intended so to be, and in the mean time by, with, and out of the rents, issues, and profits thereof,] and by, with, and out of the goods, chattels, effects, debts, sums of money, and arrears of rents, and other the premises hereby bargained, sold, and assigned, and the monies to be borrowed on the security of any mortgage, in the first place retain the costs,

Trusts.

(1) See other and more particular trusts declared, *ante*, pp. 443. 509. and *post*, rider (A), p. 637; and if the trusts are intended to be declared by a separate deed, see *ante*, Nos. IV. (A), V. (A).

charges, and expenses which they or he shall suffer, sustain, or be put to in the execution of the trusts hereby in them reposed, and after payment thereof do and shall pay unto him the said (*debtor*) and his assigns, yearly and every year during his life, for the support of himself and his family, the full annual sum of £ of lawful and current money of that part of the United Kingdom of Great Britain and Ireland called England, by two equal portions on the day of , and the day of in every year, without making any deduction or abatement thereout, or out of any part thereof, for taxes or on any other account whatsoever; the first half yearly payment thereof to be made on the day of next ensuing the date of these presents, [and do and shall in the next place pay unto the said () the wife of the said (*debtor*) the said yearly sum of £ payable to her for her life as aforesaid, when and as the same shall become payable under or by virtue of the settlement made on the marriage of him the said (*debtor*)] and do and shall after payment of the said yearly sums of £ and £ pay all such annuities as he the said (*debtor*) is bound to pay under any grant or grants made or executed by him, and do and shall or may redeem or repurchase the said annuities, or any of them, and likewise pay and discharge all principal monies with which the said several hereditaments and premises, or any of them, are or is charged or chargeable by way of mortgage, judgment, or

DEBTOR
AND
CREDITOR.

*Conveyance of
Estates to pay off
Incumbrances,
&c.*

Annuity to
debtor.

Jointure to
wife.

Keep down and
repurchase an-
nuities.

DEBTOR
AND
CREDITOR.

Conveyance of
Estates to pay off
Incumbrances,
&c.

Specialty debts.

Simple contract
debts.

Receipts of
trustees to be
good discharges.

otherwise, and all other the specialty debts due and owing from him the said (*debtor*) to any person or persons whomsoever, (with lawful interest, now or hereafter to become payable for such of the said debts as carry interest) at such times and in such manner, and either wholly or in part, as the trustees or trustee shall think proper; and after payment of the said several sums of money, debts, and interest, do and shall or may pay to every of the other creditors of the said (*debtor*) called simple contract creditors, their several and respective debts, either in full or at an equal pound rate, or in such other shares and proportions, and at such times and in such manner, as they the said trustees or trustee shall think expedient and proper. PROVIDED ALWAYS, and it is hereby declared and agreed by and between the parties to these presents, and the said (*debtor*) doth hereby expressly agree and declare, that the receipt and receipts of the said (*trustees*) and of the survivors and survivor of them, and of the executors, administrators, and assigns of such survivor, or of any one or more of them, or of other trustees hereafter to be appointed who shall be solely acting for the time being in the trusts hereof, for so much money as shall be paid to or borrowed by them or him, shall be a good and sufficient discharge, or good and sufficient discharges to the person or persons who shall pay, advance, or lend the same, and to his, her, or their executors, administrators, and assigns, for so much money as in such receipt or receipts shall be expressed to be paid or received, and that after such receipt or

receipts shall be given or signed, the person or persons paying or advancing the same shall not be obliged to see to the application thereof, or answerable or accountable for the loss, misapplication, or non-application thereof, or of any part thereof. And the said (*debtor*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said (*trustees*) their heirs, executors, administrators, and assigns, and each of them respectively, that he the said (*debtor*) shall not nor will revoke, annul, determine, or make void these presents, or any of the trusts hereby created or declared, or any of the powers or authorities hereby given to them or any of them, or otherwise in them or him lawfully vested or intended so to be, until the same shall be fully and absolutely completed, performed, or satisfied, according to the true intent and meaning of these presents. PROVIDED ALWAYS, that when, and immediately after, the said trusts, powers, and authorities shall be fully performed, completed, and satisfied, but not before, they the said (*trustees*) and the survivors and survivor of them, and the heirs, executors, administrators, and assigns of such survivor, shall and will, at the costs and charges of the said (*debtor*) his heirs, executors, or administrators, reconvey all and every the hereditaments and premises hereby granted and released, or such of them as shall not be sold or disposed of for the purposes aforesaid, and the equity of redemption of such of them as shall be mortgaged unto and to the use and be-

DEBTOR
AND
CREDITOR.

*Conveyance of
Estates to pay off
Incumbrances.
&c.*

Debtor will not
revoke, &c.

Ultimate trust
for debtor.

DEBTOR
AND
CREDITOR.

*Conveyance of
Estates to pay off
Incumbrances,
&c.*

hoof of the said (*debtor*) his heirs and assigns, and assign or transfer the said sum of £ or so much thereof as shall not have been gotten in or received, and the interest thereof, and the securities for the same, and all other the goods, chattels, personal estate and effects hereby bargained and sold, or assigned, or such of them as shall not have been received, or gotten in, or sold, or disposed of unto the said (*debtor*) his executors, administrators, and assigns, for his and their own use and benefit. PROVIDED ALWAYS, &c. (*Add power of appointing new trustees, and clauses for their indemnity, &c. (1).)* IN WITNESS, &c.

(1) See *ante*, pp. 479. 527.

DEBTOR
AND
CREDITOR.

(A) Variations in *Recitals to preceding Precedent*, No. XI.
See *ante*, p. 621, n. (2).

Conveyance of
Estates to pay off
Incumbrances,
&c.

“ WHEREAS the said (*debtor*) is indebted to sundry persons mentioned in the schedule hereunder written or hereunto annexed, in several sums of money secured by mortgages, bonds, and judgments, and is also indebted to several other persons, named in the said schedule, in very considerable sums of money due upon notes and other simple contracts; and hath granted several annuities or rent-charges to different persons during their lives or the life of some other person, and for or during his own life, and for securing the payment of the said annuities hath confessed several judgments which have been entered up against him, and hath charged the said annuities on his real estate, or on some part or parts thereof, which are likewise mentioned in the said schedule hereunto annexed. AND WHEREAS the said (*debtor*) is seised of and in the said several freehold and copyhold manors, messuages, lands, tenements, rectories, advowsons, tithes, and hereditaments in the counties of and , and hereinafter particularly described or mentioned, in fee-simple in possession, subject to the said several mortgages, charges, annuities, and incumbrances affecting the same. AND WHEREAS the said (*debtor*) is about to leave the kingdom, and,” &c. (as *ante*, p. 622).

Debtor indebted
on divers secu-
rities.

DEBTOR
AND
CREDITOR.

*Conveyance of
Estates to pay off
Incumbrances,
&c.*

(B) Variation to preceding Precedent, No. XI. where Part of the Hereditaments are Copyhold. See ante, p. 624.

Copyholds,

“ AND THIS INDENTURE FURTHER WITNESSETH, that for the purposes and considerations hereinbefore mentioned to the said (*debtor*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said (*trustees*) their heirs, executors, and administrators, that he the said (*debtor*) or his heirs shall and will immediately, or as soon as conveniently may be after the execution of these presents, (or at any time thereafter if thereunto required by them or either of them the said (*trustees* or *trustee*)), surrender or cause or procure to be surrendered into the hands of the respective lords of the manor of in the county of , and the manors and rectory of in the county of , according to the custom or customs of the same manors respectively, to the use of the said (*trustees*) and their heirs, ALL, &c. and also all other the customary or copyhold messuages, lands, tenements, and hereditaments, of him the said (*debtor*), holden of the aforesaid manors of and the rectory of , or either of them, or any other manor or manors in the said county of or elsewhere. To HOLD the same unto them the said (*trustees*) and their heirs and assigns, at the will of the lord, and according to the custom of the said manor; but nevertheless upon the trusts, and for the several ends, intents, and purposes hereinafter declared or expressed concerning the same. AND,” &c. as in text, ante, p. 625.

DEBTOR
AND
CREDITOR.

(C) Variations in the Application of the Trust Monies
declared, ante, p. 630.

Conveyance of
Estates to pay off
Incumbrances,
&c.

“AND after payment of the said costs, charges, and expenses [and of the said annuity, yearly rent, or annual sum of £ hereby provided for the said] do and shall pay off, satisfy, and discharge all the principal money and interest now due on the several mortgages (whether mentioned in the schedule hereunder written or hereunto annexed, or not) made by the said (*debtor*) of or affecting the manors, messuages, rectories, tithes, tenements, lands, and other hereditaments, or any of them, such mortgages to be respectively paid out of the money arising by sale of the estates whereon they are respectively charged; AND in the next place do and shall, by, with, and out of the money to arise by any or either of the ways or means aforesaid, redeem or repurchase all the annuities granted by the said (*debtor*) whether mentioned in the said schedule or not, [except the said annuity or yearly rent-charge of £ , to the said] or such of them as the said trustees shall think fit to redeem or repurchase, and pay all the arrears thereof, and the costs and charges of assigning or entering satisfaction on the records of the several judgments for the securing the said annuities. AND after redeeming or repurchasing the same, and paying such arrears thereof, and the costs of assigning or entering such satisfaction, do and shall pay off and discharge the several sums of money secured by the judgments mentioned in the schedule hereunder written, or hereunto annexed, entered up against the said (*debtor*) at the interest thereof, and the costs and charges of assigning or having satisfaction acknowledged on the records of such judgments; the same to be paid and discharged at such time or times, in such order, course, priority, and manner, as to them the said (*trustees*)

Trusts to pay off
mortgages.

And repurchase
annuities.

And judgments.

**DEBTOR
AND
CREDITOR.**

*Conveyance of
Estates to pay off
Incumbrances,
&c.*

And bond debts.

And simple con-
tract debts.

Application of
rents, &c. until
sale.

or the survivor or survivors of them, or the heirs, executors, and administrators of such survivor, shall seem most proper and expedient; AND from and after payment thereof, do and shall discharge all sums of money secured by the several bonds particularly mentioned and specified in the schedule hereunder written or hereunto annexed, to be due and owing to the several persons therein named, together with the interest thereof now due and to become due, the said several debts secured by bonds to be paid and discharged at such time or times, and in such order, course, priority, and manner, as to them the said (*trustees*) or the survivor or survivors of them, or the heirs, executors, and administrators of such survivor, shall deem proper and expedient; AND from and after full satisfaction and discharge of all the said several sums secured by judgments and bonds, and all interest now due and to grow due from the same respectively, before the same shall be paid off and discharged; then shall and do pay off and discharge the several simple contract debts particularly specified and mentioned in the said schedule to be due and owing to the several persons therein also named, together with the interest of such of them as bear or carry interest; the same simple contract debts to be likewise paid off and discharged at such time or times, and in such manner, as they the said trustees or the survivor or survivors of them, or the executors, administrators, or assigns, of such survivor, shall think most proper; AND from and after full payment, satisfaction, and discharge, of all the said costs, charges, and expenses, [and the said annuity hereby provided for the said] and the said several mortgages, judgments, bonds, and simple contract debts, and all interest due and to grow due for such of the same respectively as do carry or bear interest then, &c. as *ante*, pp. 447. 638. PROVIDED ALWAYS, and it is hereby further declared and agreed, by and between the said parties to these presents, that in the mean time, and until any such disposition of the manors, messuages, lands, and hereditaments, hereby granted and released and covenanted to be surrendered respectively, or intended so to be, or of a competent part thereof, for the purposes

aforesaid, can be properly effected and completed, it shall and may be lawful to and for the said (*trustees*) or the survivor or survivors of them, their heirs and assigns, to hold and enjoy the same premises, and every part thereof, and receive and take all the rents, issues, and profits thereof, which from henceforth, until the time of such sale or sales, shall accrue or grow due in respect of the same, UPON TRUST, that they or the survivors or survivor of them, shall and do, from time to time, apply and dispose of the rents, issues, and profits, so to be received, in the first place, in paying and discharging of the said costs, charges, and expenses of the execution of the trusts hereinbefore mentioned, [and, in the next place, in payment of the said annuity hereinbefore provided for the said] and after payment thereof, in paying and discharging all such arrears of interest as are now due and owing upon the said several mortgages affecting the estate hereby granted and released, or intended so to be, and the growing interest thereof, and also the interest of the sum or sums of money to be borrowed by virtue of these presents; and, in the next place, in payment of the said annuities, and the interest of the said several other debts or sums of money in the said schedule mentioned, and of such other of the debts of the said (*debtor*), the payment whereof is hereby provided for, as carry interest, or such of them as they shall think fit, and before the same shall be paid off and discharged by virtue of these presents; and in case the rents, issues, and profits of the said premises so to be received as aforesaid, shall be more than sufficient [to pay the said annuity hereby provided for the said and] and to keep down all surcharges of interest, and interests to accrue due as aforesaid, and the annuities, or such of them as shall be subsisting, THEN UPON TRUST, that they the said (*trustees*) and the survivors and survivor of them, and his heirs, shall and do, from time to time, until such time or times as such sale or sales shall be made as aforesaid, pay and apply the residue or surplus of such rents, issues, and profits, for and towards satisfaction and discharge of the principal of the said securities, debts, or

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AND
CREDITOR.

*Conveyance of
Estates to pay off
Incumbrances,
&c.*

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*Conveyance of
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Incumbrances,
&c.*

sums of money, in the said schedule specified, and in or towards the redeeming or repurchasing the said annuities, so far as the same will extend. AND THIS INDENTURE FURTHER WITNESSETH, that for the purposes aforesaid, and for carrying the said hereinbefore recited agreement and proposal into more effectual execution, he the said (*debtor*) HATH," &c.

Here may follow an assignment of the rents, with power of attorney to receive them, if requisite, as *ante*, p. 413, n. (21).

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*Bargain and Sale
by Commissioners
of Bankrupt.*

No. XII.

*Bargain and Sale of the Freehold Estates of a
Bankrupt from the Commissioners (1) to Ge-
neral Assignees.*

Variations where Part of the Estate is Copyhold.

Where the Bankrupt is a Party.

*Where the Bargain and Sale is in Substitution of a
prior Bargain and Sale.*

Where the Bankrupt is Copartner in a Firm.

THIS INDENTURE of parts, made the
day of , in the year of the reign, &c. ,

(1) By the 13 Eliz. c. 7. s. 2. the Lord Chancellor or Lord Keeper, for the time being, is empowered to appoint commissioners over the person and property of bankrupts; the major part of whom, by virtue of that act, are authorised to make at their discretion, such order and direction relative to the lands, tenements, and hereditaments, as well copy or customaryhold as freehold, which the bankrupt shall have at the time; or after his bankruptcy—either in his own right, or purchased by him jointly with his wife or children, to his own use; or of such interest, right, or title, as he shall have, and may lawfully depart withal therein; and also relative to his annuities, offices, goods, chattels, wares, merchandises, and debts; and by deeds indented and inrolled in one of his Majesty's courts of record, to make sale thereof for the benefit of his creditors; and of all deeds, evidences, and writings, touching only the same.

Commissioners
empowered to
order and sell
freehold and
copyhold lands
of bankrupts.

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AND
CREDITOR.

and in the year of our Lord . BETWEEN
(*the commissioners*) of, &c. (being the major part

*Bargain and Sale
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Estates in
mortgage, &c.

Unless bona
fide sold by
bankrupt two
months before
date of com-
mission.

Bankrupt acts
extend to Great
Britain only.

And by 21 Jac. 1, c. 19. s. 12. the same power is given to the commissioners over any land, &c. of which the bankrupt was seised in fee-tail, in possession, remainder, or reversion; and of which no remainder or reversion is in the crown, and which the bankrupt could bind or bar by recovery, or otherwise; and see *Beck v. Welsh*, 1 Wils. 276; *Pye v. Daubnuz*, 3 Brow. Ch. Rep. 596, Loft 71. And by the same act, s. 13, lands, &c. mortgaged by the bankrupt, may on payment or tender by the commissioners of principal and interest, before the time for performance of the condition, be sold in like manner as other of his estates; and see *Beck v. Welsh*, 1 Wils. 276. And by a former act, 1 Jac. 1. c. 15. s. 5. the bargain and sale of the commissioners was declared to extend not only to lands in the possession, &c. of the bankrupt at the time of his bankruptcy; but to all such as he might previously have been seised, &c. and had disposed of otherwise than for a valuable consideration, unless settled upon the marriage of any of his children, both the parties married being of full age; and see *ex-parte Shortland*, 7 Ves. jun. 88; *Glaister v. Hewer*, 9 *ib.* 12. 11 *ib.* 377; and see 1 Ca. Op. 74; *Fear. Post. Wks.* 75. 80. But now by 46 Geo. 3, c. 135. it is enacted, that "all conveyances and transactions, by and with a bankrupt, *bonâ fide*, made more than two calendar months before the date of the commission, shall be valid, notwithstanding any prior act of bankruptcy, provided the party had not notice of it at the time, nor any knowledge of the bankrupt being insolvent, or having stopped payment."

And if the bankrupt be not a trader at the time of executing a conveyance of his property, and make it without any fraudulent intent, it will be good, although he should afterwards become a trader, and be bankrupt; *Crisp v. Pratt*, Cro. Car. 548; *Lilly v. Osborne*, 3 P. Wms. 298.

But the bankrupt acts do not extend to real estates of the bankrupt, situated abroad; see *Le Chevalier v. Lynch*, Doug. 161; *ex-parte Le Mesurier*, 8 Ves. jun. 82; nor does there seem to be any mode of compelling the bankrupt to give up such estates to his creditors: it is otherwise, however, of personal

of the commissioners named in a certain commission of bankrupt hereinafter mentioned) of the one part (1), and (*the assignees*) (2) of, &c. being two of the creditors under the said commissions

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estates which pass wherever they may be; *Selkrig v. Davis*, 2 Dow. 230.

And it was long doubted whether a bankrupt was compellable to execute, in favour of his creditors, a power of appointment; *Townsend v. Wyndham*, 2 Ves. 3; *Thorpe v. Goodall*, 17 Ves. 388. jun. 460, (and see *post*); to remedy which it is enacted by 3 Geo. 4, c. 81, s. 3, that all powers vested in or belonging to any bankrupt, which he might legally execute for his own benefit (except nomination to benefices or the like), may be executed by the assignees for the benefit of the creditors in the same manner, to all intents and purposes, as the bankrupt himself might have executed the same.

(1) It was formerly held (see *ante*, Vol. II. p. 291, n. (1),) that a bankrupt was not compellable to be a party to any conveyance by the assignees; but now by 3 Geo. 4, c. 81, s. 4, the court of Chancery, on petition by the assignees or a purchaser under the commission, may order the bankrupt "to join in the conveyance and assurance of any estate and effects of such bankrupt, according to the tenor of any order made therein, and in case of his refusal, he, and all claiming under him after the time he became a bankrupt, shall be estopped from objecting to the validity of such deed or conveyance, and the same shall, upon petition for that purpose, be declared to be as effectual as if it had been executed by the said bankrupt." And much inconvenience might often be prevented by the assignees requiring him to join in the bargain and sale to themselves; in which case make him a party of the second part.

(2) The assignees are generally chosen from amongst the principal creditors of the bankrupt, but this is not required by the statutes, see *ex-parte* *Gregnier*, 1 Atk. 90, and is, therefore, at the discretion of the creditors; the major part in value of whom (whose debts respectively amount to £10 or upwards) and who have proved under the commission, are empowered by 5 Geo. 2, c. 30, s. 26 and 27, to choose such person or persons to be assignees of the bankrupt's property as they may think fit.

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of the other part. WHEREAS (1) his Majesty's commission under the great seal of Great Britain, grounded upon the several statutes made concerning bankrupts, bearing date at Westminster the day of last past, hath been awarded and issued against the said (*bankrupt*) directed to , &c. commissioners in the said commission named thereby, giving full power and authority unto them the said commissioners, or any three of them to execute the same, as by the said commission, reference being thereunto had, may more fully appear. AND whereas the major part of the said commissioners on putting the said commission into execution and the due examination of witnesses, and otherwise found that the said (*bankrupt*) for then last past and upwards, had used and exercised the trade and business of , and dealer in , and bought, sold, and traded in buying and selling, and endeavoured to get his living thereby, as others of his trade and business are used to do, and by that means became justly and truly indebted to the said (*assignees*) respectively in the sum of £. and upwards for goods sold and delivered (*or as the case may be*) and to divers other persons in several sums of money, and that the said (*bankrupt*) in the judgment of the major part of the said commissioners, had become a bankrupt to all intents and purposes within the compass, true intent, and mean-

(1) See a shorter form of these recitals, *post*, p. 645, n. (1).

ing of the several statutes made concerning bankrupts, or some of them, before the date and suing forth of the said commission. AND whereas the said , , and , (being the major part of the commissioners in the said commission named) by examination upon oath of the said (*bankrupt*) and otherwise, found that the said (*bankrupt*) at the time, and since he so became a bankrupt as aforesaid, was possessed of divers goods, household stuff, and implements of household, all which they the said commissioners did cause to be seised by virtue of their warrant. AND whereas pursuant to an advertisement in the London Gazette, for that purpose inserted, the creditors of the said (*bankrupt*) appeared at a meeting of the major part of the said commissioners at the Court of Commissioners of Bankrupt in London (1), and the said (*assignees*) were by the major part in value of the creditors of the said (*bankrupt*) who had proved or did then severally prove their respective debts amounting to above £ , nominated and chosen to be assignees of the estate and effects of the said (*bankrupt*) according to the form of the statute in

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Choice of
assignees.

(1) By 5 Geo. 2, c. 30, s. 26, meetings of commissioners for the city of London and bills of mortality were directed to be at the Guildhall of the city, but now by 1 and 2 Geo. 4, c. 15, s. 4, "all public meetings under commissions of bankrupt in London, and all places within the bills of mortality, as well those fixed by the commissioners, as meetings of creditors under commissions, held in pursuance of public advertisement, are directed to be holden within the Court of Commissioners of Bankrupt, unless otherwise specially directed in writing by the major part of the commissioners."

Place of
meeting.

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WITNESS, that
in pursuance of
said commission.

that case made and provided. AND whereas (1) the said (*commissioners*) by indenture bearing date the day of , assigned unto the said (*assignees*) all and singular the goods and personal estate and effects of the said (*bankrupt*) in trust for themselves and other the creditors of the said (*bankrupt*). AND whereas the said (*commissioners*) have found that the said (*bankrupt*) at the time of his so becoming bankrupt, was also seised of, or otherwise interested in certain freehold and copyhold estates to him and his heirs (2). Now THIS INDENTURE WITNESSETH, that in further execution

Brevity.

(1) 'To lessen the expense of the assignment under commissions of bankrupt, the recitals of the proceedings may be more curtailed, thus,

“ WHEREAS a commission of bankrupt under the great seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, on the day of , was awarded and issued against (*the bankrupt*) of, &c. and he was thereupon duly found and declared a bankrupt under the statute; and the said (*assignees*) on or about the day of were named and duly chosen assignees of his estate and effects.”

Provisional
assignee.

(2) If the bargain and sale be to a provisional assignee, (which seems to be in many cases as necessary in respect of real property as an assignment of personalties), recite as *post*, p. 666.

Renewed com-
mission.

If the bargain and sale be from commissioners in a renewed commission, recite the death or removal of the former commissioners and the renewed commission.

New bargain
and sale under
3 Geo. IV. c. 81.

By act of 5 Geo. 2, c. 30, it was declared that the lord chancellor might, upon petition of any creditors, order any assignment of bankrupts' estates by commissioners to be vacated, and new ones be made to other assignees, &c.; but doubts having arisen whether that act extended to authorise the vacating of deeds of *bargain and sale* enrolled of the lands, &c. of bankrupts, it is declared by 3 Geo. 4, c. 81, s. 5, that the same shall extend to the vacating of any such deeds of bargain and sale, and that it

of the hereinbefore in part recited commission, and by force and virtue of the same (1); and [for and in consideration of the sum of five shillings of lawful current money of England to the said (*commissioners*) in hand well and truly paid by the said (*assignees*) at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; and also] for and in consideration of the covenants and agreements hereinafter contained on the part of the said (*assignees*) their heirs, executors, and administrators, to be observed and performed (2), THEY the said (*commissioners*) HAVE granted, bargained, sold,

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Commissioners
bargain and sell.

shall be lawful for the lord chancellor, lord keeper, or lords commissioners for the great seal, upon the petition of any creditors, to order the vacating of any deed of bargain and sale of the lands, tenements, and hereditaments, freehold or copyhold, of any bankrupt or bankrupts then remaining unsold and not conveyed, and the inrolment thereof; (without nevertheless in any manner affecting the title of any previous purchaser;) the commissioners to execute a new bargain and sale thereof, which shall be good, without any conveyance from any former assignees. If therefore the present bargain and sale be a new one executed under the authority of that act, recite here the former bargain and sale, the order of the court, and sec. 5 of the last mentioned act; for the form of which see INDEX, *voc.* RECITALS.

(1) By 3 Geo. 4, c. 81, s. 8, joint commissions may be issued against two or more copartners in a firm, without all the partners being included: should this have been the case, and a commission be subsequently issued against other of the partners, recite the former commission, and 3 Geo. 4, c. 81, s. 9.

Bankrupt a
copartner.

And by sec. 10 of the same act joint creditors of three or more copartners may vote for assignees, &c. in respect of their joint debts.

Creditors co-
partners.

(2) If the bargain and sale be to a provisional assignee, see *post*, p. 667.

Provisional
assignee.

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of Bankrupt.

Parcels.

ordered, directed (1), and conveyed, and by this present indenture, intended to be enrolled in one of his Majesty's courts at Westminster (2), Do, so far, and in such manner as they can or lawfully may, grant, bargain, sell, order, direct, and convey unto the said (*assignees*) their heirs and assigns, ALL and every the messuages, lands, tenements, and hereditaments (save only and except customary or copyhold (3) lands and hereditaments)

"Ordered and directed."

(1) For the reason mentioned in the next note, it is proper to insert the words used in the statute; see 13 Eliz. c. 7, s. 2, and 21 Jac. 1, c. 19, sec. 12.

No estate in commissioners.

(2) The commissioners having no *estate* in the lands of the bankrupt, but only a *power* to dispose of them, the requisites of the several statutes must be strictly observed in the execution of their authority; *Perry v. Bowes, Jones*, 196, 1 Vent. 360; and these requisites are by 13 Eliz. c. 7, s. 2, that their conveyance be by deed *indented*, and which by 21 Jac. 1, c. 19, s. 12, must be by *bargain and sale*, made by the major part of the commissioners, to be enrolled in one of his Majesty's courts of record, all which requisites must therefore be complied with.

Copyholds,

(3) Copyhold and customary estates are expressly mentioned in the statute 13 Eliz. c. 7, and will therefore pass by the bargain and sale of the commissioners without the necessity of a surrender, as in other cases (the assignees compounding with the lord for his fine). It is however recommended by Hardwicke, chancellor, not to include them in the bargain and sale, but that the commissioners should convey to purchasers in the first instance, in order to save to the estate the fine which would be due on the admission of the assignees, see *Drury v. Mann*, 1 Atk. 95, and it has therefore become the common practice to omit them. But as the act of 5 Geo. 2, c. 30, s. 26, directs that the commissioners shall assign "every the estate and effects" of the bankrupt to the assignees chosen by the creditors, it may reasonably be doubted whether the commissioners are not bound by the act to convey the whole of the bankrupt's property to such assignees, and they surrender to the purchaser, and see 1 Chris. B. L. 256, n.

in or to which (1) he the said (*bankrupt*) at the time of his so becoming bankrupt, or at any time since (2) had, or now hath, any estate, right, title,

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(1) In ordinary conveyances it is proper to particularize the lands, &c. intended to be conveyed, in order to identify and distinguish them from other estates of the grantor, but this is not requisite in a bargain and sale by commissioners to the assignees of a bankrupt, as the *whole* of his lands, without exception, are intended to be included. Hence all reversions and remainders, without being so described, will pass by the bargain and sale, (and that exonerated from any power of revocation of the uses which the bankrupt has by settlement, or otherwise, Loft. 71,) and also any future or contingent interest which the bankrupt has, vests in the commissioners, and passes by the bargain and sale. But if any future interest accrue to him before the obtaining his certificate, it will require a new conveyance to pass it; *ex-parte* Proudfoot, 1 Atk. 253; *Jacobson v. Williams*, 1 P. Wms. 389; *Kitchen v. Bartsch*, 7 East, 53; so it extends to an advowson, (but without affecting the bankrupt's right of presentation, if the church be then void); so also the living of a clergyman, being a trader, will be liable to a sequestration under the bankrupt acts; *ex-parte* Meymot, 1 Atk. 200; but lands, or fixtures to the freehold, previously mortgaged or disposed of by the bankrupt for a valuable consideration, even though they continue in the possession of the debtor, do not pass to the assignees, as the act of 21 Jac. 1, c. 19, s. 11, relative to property of the bankrupt remaining in his possession after he has disposed of it, extends to goods and chattels only; see *Ryall v. Rolle*, 1 Atk. 165; 1 Ves. 352, S. C. also *post*, p. 652, n. (1), nor will the bargain and sale of the commissioners affect the wife's title to dower out of the bankrupt's estates; *Smith v. Smith*, 5 Ves. 189; *Lyster v. Lyster*, 1 Ves. jun. 435; *Thornton v. Dixon*, 3 Brow. Ch. Ca. 199; and by 3 Geo. 4, lands, &c. of which the bankrupt has a beneficial power of appointment are made subservient to the commissioners and their assignees, see *ante*, p. 643, in notes.

Parcels; and
what passes by
the bargain and
sale.

(2) It is enacted by 13 Eliz. c. 7, s. 11, that all lands, goods, &c. purchased by, or by any means coming to, the bankrupt before his debts shall be fully satisfied, shall be bargained and sold by the commissioners in like manner as those which he had

Property sub-
sequently ac-
quired.

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of Bankrupt.*

or interest, in possession, reversion, remainder, expectancy, or otherwise howsoever, in Great Britain (1), and which he the said (*bankrupt*) could or can lawfully part withal, with their and every of their appurtenances; And all the estate, right, title, interest, use, trust, property, benefit, equity of redemption, power, possibility (2), claim, and demand (3) whatsoever, both at law and in

at the time of his being declared a bankrupt. But if such property be of a real nature, and come to the bankrupt after the issuing of the commission, it will be necessary for them to execute a fresh bargain and sale, in order to pass it to the assignees; see *Kitchen v. Bartsch*, 7 East, 53, and *ante*, p. 649, n. (1).

Colonies.

(1) The bankrupt acts do not extend to the colonies, or to any of the king's dominions out of Great Britain; see *Le Chevalier v. Lynch*, Dougl. 161; *Mackintosh v. Ogilvie*, cited 4 Durnf. and E. 193; *ex-parte Le Mesurier*, 8 Ves. jun. 82; *Cleve v. Mills*, Cooke Bankr. Laws, 297, and the Irish Bankr. Acts, 11 and 12 Geo. 3.

Possibility.

(2) A possibility is within the 13 Eliz. c. 7, s. 2, and will therefore pass to the commissioners, and is assignable by them, *Worrall v. Marlar*, 1 P. Wms. 459, n.; *Higden v. Williamson*, 3 *ib.* 132; *Jewson v. Moulson*, 2 Atk. 417; *Mitford v. Mitford*, 9 Ves. jun. 87; but it must be such a possibility as can be released, and as the bankrupt could have disclosed in his examination, and not an estate which may have come to him since his bankruptcy has closed; see *Moth v. Frome*, Amb. 394, and the preceding notes.

Right of action.

(3) These words will pass a right of action in the bankrupt, *Smith v. Coffin*, 2 Hen. Blac. 444. But it has been holden, that the assignees of a bankrupt are not entitled to the performance of a covenant or agreement made with the bankrupt, such benefit not being within the statutes; *Drake v. Mayor of Exeter*, 1 Cha. Ca. 71; *Moyses v. Little*, 2 Vern. 194; but under 5 Geo. 2, c. 30, s. 26, directing the commissioners to assign to them every the estate and effects of the bankrupt, whereby he expects any profit, or possibility of profit, it should seem that "a covenant, contract, or articles of agreement for the bankrupt's benefit, which he himself could assign to another, or

equity, of them the said (*commissioners*) of, in, to, or concerning the same, or any part thereof, under or by virtue of the said commission, and the rents, issues, and profits thereof; [Together with all deeds (1), evidences, and writings whatsoever, which in any wise relate to the same premises, or any part thereof, and which now are or hereafter shall or may be in their custody or lawful power.] To HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and all and singular other the premises hereinbefore granted, bargained, and sold, ordered, directed, conveyed, or otherwise assured, or intended so to be, with their and every of their appurtenances, unto the said (*assignees*) their heirs and assigns, to the use of them the said (*assignees*) their heirs and assigns for ever, (subject only to any mortgage or mortgages, or other valid and subsisting charges or incumbrances to which the same or any part

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To HOLD to the
assignees, in
trust for cre-
ditors.

which would descend to his heirs, or which his personal representatives would have the benefit of, either at law or in equity, may be considered as his estate and effects, and will pass to the assignees either by the bargain and sale, or assignment, 1 Chr. B. L. 258. And it has been expressly determined, that a right of action to recover real property passes by the bargain and sale of the commissioners; see *Smith v. Coffin*, 2 H. Black. 444, where Buller, justice, expressed his doubts of the authority of the case of *Moyses v. Little*, cited above; and see *Brooke v. Hewett*, 3 Ves. jun. 253.

(1) Upon the debtor being declared a bankrupt, all deeds and evidences of title vest in the commissioners, and to which the assignees will become entitled; see 13 Eliz. c. 7, s. 2, as they also are to the custody of the proceedings under the commission; *ex-parte* *Scarth*, 15 Ves. jun. 293.

Deeds.

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Covenant by
assignees to sell,
&c.

Conveyances of
bankrupt prior
to bankruptcy.

Provisional
assignee.

Assignees
trustees of
surplus.

Provisional
assignee.

Covenants by
assignees.

thereof is or are subject or liable (1). IN TRUST nevertheless (2), for the benefit of them the said (*assignees*) and all other the creditors of the said (*bankrupt*) who have already sought or who shall hereafter in due time seek relief under the said commission, or any renewed commission; and as to any surplus thereof in trust for the said (*bankrupt*) his heirs and assigns (3), according to the limitations and conditions of the several statutes made in that behalf. AND (4) the said (*assignees*) for themselves severally and respectively (5), and for their several and respective

(1) The commissioners take precisely such estate, and so subject as the bankrupt had at the time of the bankruptcy, except only that by 46 Geo. 3, c. 135, s. 1 and 2, conveyances, &c. *bonâ fide* made by him, and also executions and attachments against his property, not more than two calendar months after any act of bankruptcy committed, shall be good notwithstanding any subsequent commission of bankruptcy, so that the other party had no notice of any prior act of bankruptcy, or that the bankrupt was insolvent or had stopped payment; and see *ante*, p. 649, n. (1).

(2) If the bargain and sale be to a provisional assignee, add, "For the immediate preservation thereof."

(3) The bankrupt acts vest the bankrupt's estate in the commissioners, and the assignees respectively, solely for the purpose of paying his debts; and upon these being paid, and in the mean time subject only to such debts, they hold in trust for the bankrupt; *Charman v. Charman*, 14 Ves. jun. 580.

(4) If the bargain and sale be to a provisional assignee, substitute covenants similar to those *post*, p. 669, instead of these.

(5) In the case of *Primrose v. Bromley*, 1 Atk. 89, Lord Hardwicke recommended that the assignees should covenant *jointly and severally*, which will make them considered in a court of equity as mere trustees, and each answerable only for his own receipts, &c.; but as a joint stipulation would at law render the trustees responsible for the acts of each other, it seems unreasonable that they should be made to covenant otherwise than *severally* only.

heirs (1), executors, and administrators, and not the one for the other or others of them, or for the heirs, executors, or administrators of the other or others of them, do hereby covenant, promise, and agree, with and to the said (*commissioners*) and also with and to all and every other the commissioners in the said commission or any renewed commission named or to be named, in the manner following, that is to say, that they the said (*assignees*) shall and will, with all due expedition, sell, or otherwise dispose of, all and singular the lands, tenements, hereditaments, estate, interest, and premises hereby granted, bargained, and sold, or otherwise assured, or intended so to be, with their appurtenances, or a sufficient part thereof, for the best price or other satisfaction which can be reasonably obtained for the same. AND further that they the said (*assignees*) respectively, and their respective executors, and administrators, shall and will from time to time, and at all times hereafter, upon every reasonable request made to them in that behalf, render and give unto the said (*commissioners*) or other the commissioners in the said commission, or any renewed commission named or to be named, a true, just, and perfect account in writing, under the respective hands of them the said (*assignees*) their respective executors, or administrators, of all sums of money or other satisfaction which they the said (*assignees*) their

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And pay the
produce to com-
missioners.

(1) This covenant being made to extend to the heirs of the assignees, and being also a specialty security under hand and seal, gives the commissioners a remedy against their real property in the hands of the heir; *Primrose v. Bromley*, 1 Atk. 89.

Heirs of as-
signees.

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executors or administrators, shall respectively have received from or by such sale, or otherwise by virtue of these presents, and shall and will duly pay or cause to be paid the same (after deducting reasonable expenses) unto them the said commissioners or to some of them, or to such other person or persons as they or the major part of them shall direct, in order and to the end that the said monies may be by them the said commissioners ordered, disposed of, distributed, and divided unto, and amongst all and every the creditors of the said (*bankrupt*) who have already sought or shall hereafter in due time seek relief under the said commission; according to the direction of the several statutes in that case made and provided; and in the mean time shall and will from time to time as and when the said monies shall amount to the sum of £ or upwards pay the same into the hands of bankers in , [or invest the same in the purchase of exchequer bills or three per cent. consolidated Bank annuities] in their joint names, subject to the order of the said commissioners for the benefit of the said creditors. AND LASTLY (1), that they the said (*assignees*) their heirs, executors, or admi-

And indemnify
the commis-
sioners.

Indemnity to
commissioners.

(1) This covenant by the assignees to indemnify the commissioners against all lawful acts done by them in the execution of their duty, is found in the oldest forms I have met with; but it seems to be scarcely reasonable, and has in a very recent case proved a great hardship upon them; see *ex-parte* Linthwaite, 16 Ves. jun. 234; where it was holden, that under this covenant they were liable to the expenses of an action brought by the bankrupt himself, without their privity, against the commissioners, for false imprisonment.

nistrators, shall and will from time to time, and at all times hereafter, save, defend, keep harmless and indemnified, all and every the said (*commissioners*) and other the commissioners in the said commission, or any renewed commission named or to be named, and their respective heirs, executors, administrators, servants, and assigns, and every of them, and their and every of their goods and chattels, and lands and tenements, of and from all and all manner of actions, suits, costs, damages, and expenses whatsoever, which shall or may be brought or instituted against, or arise or happen unto, or be borne or sustained by them, or any or either of them, for or by reason of their, or either of their executing these presents, or of any other act, deed, matter, or thing whatsoever, which by them or any or either of them has been or shall or may be lawfully done, by virtue or in pursuance of the said commission, relative to the estates, property, or effects, of the said (*bankrupt*) hereby granted, bargained, and sold, or otherwise assured, or intended so to be, or any part thereof. IN WITNESS, &c.

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. The bargain and sale of commissioners of bankrupt must, Inrolment. by 13 Eliz. c. 7, be enrolled in some court of record, and if it include any estate tail, the inrolment must, in order to bar the entail, be in one of the courts at Westminster; see 21 Jac. 1, c. 19, s. 12; and such inrolment must, by the last mentioned act, and the 27 Hen. 8, c. 16, be within six calendar months from the date; and see also *Bennet v. Gandy*, Carth. 178; *Elliot v. Danby*, 12 Mod. 3. And it seems that in case the original be lost before inrolment, the court will not allow of the inrolment of its counterpart; *ex-parte Robson*, Amb. 180; and see 2 Com. Dig. 8vo. 25.—See also INTRODUCTION, *ante*, p. i. *et seq.* (after p. 356), par. I.

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AND
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Commissioners of
Bankrupt to
General
Assignees.*

No. XIII.

*Assignment of the Personal Estate and Effects and
Chattel Interests of a Bankrupt by the Commis-
sioners to General Assignees.*

THIS INDENTURE, of parts, made the
day of [in the year of the reign, &c.
and] in the year of our Lord .

Parties. BETWEEN (*the commissioners*) of, &c. (being
the major part of the commissioners named in
a certain commission of bankruptcy hereinafter
mentioned) of the one part, and (*the assignees*) of,
&c. assignees chosen by the major part in value
of the creditors (1) under the said commission of
the other part. WHEREAS a commission of bank-
Recital of rupt under the Great Seal of the United Kingdom
commission. of Great Britain and Ireland, bearing date at

Estate and
effects of bank-
rupt to be as-
signed by the
commissioners.

5 Geo. 3.

(1) It has been shewn in the preceding notes, see No. XII. p. 648, n. (2), *et seq.* that by the acts of 13 Eliz, c. 7, and 21 Jac. 1, c. 19, all the real and personal estate of the bankrupt vests in the commissioners, (and see *Ex-parte* Smith, 5 Ves. jun. 295), who are authorised to sell or otherwise order the same for the satisfaction and payment of his creditors; and by the 5 Geo. 3, c. 20, s. 26, such commissioners, or the major part of them, are directed to assign the estate and effects of the bankrupt to such person or persons as the major part in value of the creditors who have proved under the commission shall name.

Westminster on the day of , was awarded
and issued against (*the bankrupt*) of, &c. ,

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and he was thereupon duly found and declared a
bankrupt, and the said (*assignees*) were, on or
about the day of named and chosen

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assignees of his estate and effects, agreeably to the
statutes in that case made and provided (1). AND

Choice of
assignees.

WHEREAS the said (*assignees*) have requested that
the personal estate and effects of the said (*bank-*

rupt) may be assigned to them in pursuance of the
statutes made in that behalf. NOW THIS INDEN-

WITNESS, that
in pursuance of
said commission,

TURE WITNESSETH, that in further execution of the
hereinbefore in part recited commission, and by

force and virtue of the same and of the statutes
now in force concerning the premises, and in

consideration of the covenants and agreements
hereinafter contained on the part of the said

(*assignees*) to be observed and performed, [and
also for and in consideration of the sum of 10s.

of lawful current money of England to the said
(*commissioners*) in hand well and truly paid by

the said (*assignees*) at or immediately before the
sealing and delivery of these presents, the receipt

whereof is hereby acknowledged.] THEY the
said (*commissioners*) HAVE bargained, sold, or-

commissioners
assign estate
and effects.

dered, directed, assigned, transferred, and set
over, and by this present indenture intended

(1) See a fuller form of recitals under the commission, *ante*, Recitals.
p. 644.

If the assignment be made under a renewed commission, re- Renewed
cite the death, &c. of commissioners, chancellor's order, and commission.
subsequent proceedings.

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to be enrolled in one of His Majesty's Courts at Westminster, Do so far and in such manner as they respectively can or lawfully may bargain, sell, order, direct, assign, transfer, and set over unto the said (*assignees*) their executors, administrators, and assigns, ALL(1) and singular the

What property
passes by the
assignment.

(1) The statute 13 Eliz. c. 7, vests in the commissioners all the "money, goods, chattels, wares, merchandises, and debts, wheresoever they may be found or known," and also all "fees, annuities, and offices," of the bankrupt. Hence every kind of chattel interest and personal property whatsoever in possession, expectancy, or otherwise, which the bankrupt could himself dispose of, or which he might have at the time of the commission, or afterwards, before the allowance of his certificate may be assigned by the commissioners. *Ex-parte* Proudfoot, 1 Atk. 252; *Evans v. Mann*, 2 Cowp. 569; *Ashley v. Kell*, 2 Stra. 1207; *Kitchen v. Bartsch*, 7 East, 53; *Holroyd v. Gwynne*, 2 Taunt. 176; *Tudway v. Bourne*, 2 Burr. 716; so also the benefit of a policy of assurance although not occurring till after his death, *Schondler v. Ware*, 1 Campb. N. Pri. 487; and see *post*, p. 660, n. (1); but if it be of a chattel or personal nature requiring delivery of possession, it will not pass without that requisite takes place; *Mucklow v. Mangles*, 1 W. P. Taunt. 318.

The 21 Jac. 1. c. 19, vesting the personal estate of the bankrupt in the commissioners, extends not only to his own proper goods and chattels, but also to such goods and chattels as he shall by the permission of the true owner have in his possession, as reputed owner, *Twine's Ca.* 3 Co. 81; *West v. Skip*, 1 Ves. 456; *Gordon v. E. I. Company*, 7 Durnf. and E. 228; *Collins v. Forbes*, 3 *ib.* 316; *Darby v. Smith*, 8 *ib.* 82, which has been determined to include furniture, &c. let to the bankrupt to hire, *Ryall v. Roll*, 1 Atk. 165; *Horn v. Baker*, 9 East, 215; *Lingham v. Biggs*, 1 Bos. and Pul. 82, but not to things incapable from their nature or bulk, or the like, of actual delivery, *Ryall v. Rolle*, 1 Atk. 165; *Manton v. Moore*, 7 Durnf. and E. 67, nor to property deposited with the bankrupt for any special purpose, *Burdett v. Willett*, 2 Vern. 638; *Mace v. Cadell*, 1 Cowp.

goods, chattels, wares, merchandise, debts, sum
and sums of money, and all other the chattel and

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232; *ex parte*, Flynn, 1 Atk. 185; Took v. Hollingsworth, 5 Durnf. and E. 215, 2 Hen. Blac. 501; nor to property he has in his possession as executor, Howard v. Jemmett, 3 Burr. 1369; *ex parte* Marsh, 1 Atk. 159, or as trustee, Copeman v. Gallant, 1 P. Wms. 314; Joy v. Campbell, 1 Sch. and Lef. 328, nor to goods which, although ordered by the bankrupt, have not actually come to hand, and the delivery of which has been refused, or counter-ordered, Ellis v. Hunt, 3 Durnf. and E. 464, or been rejected immediately after delivery, with the vendor's assent, Mills v. Ball, 2 Bos. and Pul. 457; Salt v. Field, 5 Durnf. and E. 211; Neate v. Ball, 2 East, 116; Dixon v. Baldwin, 5 ib. 175; Wallace v. Breeds, 13 ib. 522; nor to bills paid into the hands of a banker becoming bankrupt, Giles v. Perkins, 9 East, 12, unless they have been indorsed and paid to third persons, Bolton v. Puller, 1 Bos. and Pul. 539.

And if there be partners who become bankrupt, and a joint commission be issued, the assignment will pass as well the joint estate of the parties, *vid. ex parte* Cooke, 2 P. Wms. 500, and includes every species of property they had a right to at the time of the bankruptcy, Bolton v. Puller, 1 Bos. and Pul. 539. And so under a separate commission against one of the partners only, the assignees take all the separate property of the bankrupt and all his interest, *i. e.* his undivided share in the joint estate, but subject to the rights and interests of the other parties, and to the account between them; Richardson v. Goodwin, 2 Vern. 293; Goss v. Dufresnoy, Dav. 371; *ex parte* Cobham, 1 Brow. Ch. Rep. 576; *ex parte* Hodgson, 2 ib. 5; and see now 3 Geo. 4, c. 81, s. 8, *ante*, p. 647, n. (1), by which act it is also declared, that assignees under a commission issued against one or more of a firm may (by allowance of the court on petition) bring actions, &c. in their own names, or the names of the other partners, against debtors to the firm, and that any release by such partners shall be void.

The property of the wife of the bankrupt will also pass to the assignees, if the husband be himself entitled to receive it, whether it belonged to her before, or came to her after her marriage, and whether it consist of simple contract debts; Miles v. Wil-

Partners.

3 Geo. 4.

Wife's property.

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personal estate, effects, and interests whatsoever, which the said (*bankrupt*) was possessed of, interested in, or entitled unto, at the time he became bankrupt, or at any time since (1); And all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity, of them the said (*commissioners*) and of every of them, under or by virtue of the said commission, or any

liams, 1 P. Wms. 258; or on mortgage, *Bosville v. Brander*, *ib.* 458; or monies in the funds, *Pringle v. Hodgson*, 3 Ves. jun. 617; but not of choses in action not reduced into possession by the husband in his life-time, *Mitford v. Mitford*, 9 Ves. jun. 87; as a legacy, &c. and the husband die before it be paid, *Milner v. Colmer*, 2 P. Wms. 638; *Adams v. Pearce*, 3 *ib.* 16; *Jewson v. Moulson*, 2 Atk. 419; *Gayner v. Wilkinson*, 2 Dick. 491, 1 Brow. Ch. Ca. 44, S. C. cited (*sed vid.* *Miles v. Williams*, 1 P. Wms. 255), nor of property settled, or agreed to be settled to her separate use, *Jordan v. Savage*, 2 Eq. Ca. Ab. 102; *Vandernanker v. Desborough*, 2 Vern. 96; *Bennett v. Davies*, 2 P. Wms. 316; *Browne v. Jones*, 1 Atk. 188; *Tyrrel v. Hope*, 2 Atk. 562; *Lockyer v. Savage*, 2 Stra. 946; *Burdone v. Deane*, 2 Ves. jun. 607; *Jarman v. Woolloton*, 3 Durnf. and E. 618; nor to property of which she is possessed as a sole trader by the custom of London; *Lavie v. Phillips*, 3 Burr. 1776; 1 Blackst. 570.

Property acquired subsequent to bankruptcy.

(1) Personal property, although acquired by the bankrupt subsequent to the issuing of the commission, will vest in the commissioners, and will pass by the general assignment to the assignees, in which it differs from real property subsequently vesting in the bankrupt, for of these there must be a new bargain and sale. *Ex parte Proudfoot*, 1 Atk. 252; *Evans v. Mann*, Cowp. 569; *Martin v. O'Hara*, *ib.* 823; *Higden v. Williamson*, 3 P. Wms. 132; *Kitchen v. Bartsch*, 7 East, 53; in which last case this distinction was confirmed on the ground of the universal practice, although the principle was justly doubted; and see *ante*, p. 658, n. (1).

renewed commission, of, in, to, or concerning the same premises, or any part thereof. To HAVE AND TO HOLD, receive, and take the said goods, chattels, wares, and merchandise, debts, estates, effects, and all and singular other the premises hereinbefore bargained, sold, ordered, directed, and assigned, or otherwise assured or intended so to be, and every part and parcel thereof, unto the said (*assignees*) their executors, administrators, and assigns, as their own proper goods and chattels (1); IN TRUST nevertheless, and to and for the use, benefit, and advantage of them the said (*assignees*), and all other the creditors of the said (*bankrupt*) who have already sought, or who shall hereafter in due time seek relief under the said commission, and as to the surplus, if any thereof, in trust for the said (*bankrupt*) his executors, administrators, and assigns (2), according to the several statutes made and now in force in that behalf (3). AND the said (*assignees*) for them-

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To hold to the
assignees in trust
for creditors.

Covenant by
assignees to
sell, &c.

(1) Until the 49 Geo. 3, c. 121, the bankrupt was liable to the payment of the rent and performance of the covenants in leases, notwithstanding the commissioners' assignment: but by that act it is provided, that upon the acceptance of the premises by the assignees, the bankrupt shall not afterwards be liable to pay the rent or perform any of the covenants, conditions, or agreements with his landlord in respect thereof; and see *Baudillon v. Dalton*, Peak Ca. 239.

Bankrupt exonerated from rents and covenants.

(2) Upon the debts being paid, the assignees are trustees for the bankrupt, and must transfer to him the residue, if any, of the property assigned to them, when required; *Charman v. Charman*, 14 Ves. jun. 580.

Assignees trustees of surplus.

(3) In an assignment of personalty, and other choses in action to a purchaser, the student will have perceived, that a power of attorney is usually inserted in this part of the deed; but as the chief use of such a power is to authorise the assignee to

Letter of attorney.

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selves severally and respectively, and their several and respective heirs, executors, and administrators, but not jointly or the one for the other or others of them, or the heirs, executors, or administrators of the other or others of them, or his, their, or any of their acts, deeds, or defaults, do hereby covenant, promise, and agree, with and to the said (*commissioners*) and their respective executors and administrators, in the manner following, that is to say, that they the said (*assignees*) (each covenanting severally, as aforesaid) (1) their respective executors and administrators, shall and will from and immediately after the execution hereof, use and employ all necessary and proper means to get in and obtain possession of all and singular the estate, effects, and premises, hereby assigned, or otherwise assured, or intended so to be, and also to sell and dispose of such part thereof as does not or shall not consist of money, or securities for money, for the best price or other satisfaction which can be obtained for the same.

AND FURTHER, that they the said (*assignees*) their

make use of the name of the assignor, on account of choses in action not being at law assignable, it is unnecessary in an assignment by commissioners, because all the estate and effects of the bankrupt becoming vested in the assignees, and being expressly required by the bankrupt acts to be assigned, they cannot be considered any longer as not at law assignable; see also 1 Jac. 1, c. 15, s. 13, which declares, that "the party or parties to whom any debt of the bankrupt shall be assigned by the commissioners shall have like remedy in all respects, to recover the same, as the party himself might have had," and see, with respect to copartners, bankrupts, 3 Geo. 4, c. 81, s. 8, *ante*, p. 659, notes.

(1) See *ante*, p. 652, n. (5).

executors and administrators respectively, shall and will, from time to time, and at all times hereafter, upon every reasonable request made to them in that behalf, render and give unto the said (*commissioners*) or other the commissioners in or by the said commission, or any renewed commission named or to be named, a true, just, and perfect account in writing, under the respective hands of them the said (*assignees*) their executors or administrators respectively, of the sum or sums of money, or other satisfaction which they respectively shall have received, or which shall have come to them or either of their hands, either by or from any such sale or sales, or otherwise howsoever by virtue of these presents, and shall and will duly pay over, or cause to be paid over the same (after deducting reasonable expenses) unto them the said (*commissioners*) or some of them, or other the commissioners aforesaid, or to such person or persons as they shall direct, to and for the end and intent that the said monies may be by them the said commissioners ordered, disposed of, distributed, and divided unto and amongst all and every the creditors of the said (*bankrupt*) who shall be entitled thereto under the said commission, or any renewed commission, according to the several statutes in that case made and provided; and in the mean time shall and will when and so often as the said monies shall amount to £ invest the same in the purchase of exchequer bills or of three per cent. consolidated Bank annuities, [or deposit the same in the banking-house of] in their

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joint names, to the account of the estate of the said (*bankrupt*) subject to the order of the said commissioners, for the benefit of the several creditors. AND lastly, that they the said (*assignees*) their executors and administrators, shall and will, from time to time, and at all times hereafter, save, defend, keep harmless and indemnified, all and every the commissioners in the said commission named, or to be named, and their respective executors, administrators, or agents and servants, and every of them, and their and every of their goods and chattels, lands and tenements, of, from, and against all and all manner of actions, suits, costs, damages, and expenses whatsoever, which shall or may arise or happen to, or be paid, borne, or sustained by them the said commissioners, or any of them, their, or any of their executors or administrators, for or by reason of their executing these presents, or any other act or thing whatsoever, by them or any of them lawfully done, or to be done, in, with, or concerning the estate or effects of the said (*bankrupt*), or any part thereof, in pursuance or by virtue of the said commission, or any renewed commission. IN WITNESS, &c.

No schedule.

By 5 Geo. 2, c. 30, s. 42, it is enacted that no schedule shall be annexed to any assignment of the personal estate of the bankrupt from the commissioners to the assignees.

Enrolment.

. Although this assignment be of the personal property of the bankrupt, yet it is presumed it will require enrolment, as the authority given to commissioners by the statute of 13 Eliz. c. 7, s. 2, to make sale, or "otherwise order" the "lands, tenements, and hereditaments," and also "fees, annuities, offices, goods and chattels," is directed to be by deed indented, and enrolled in one of his Majesty's courts at Westminster.—And see INTRODUCTION, *ante*, p. i. *et seq.* (after p. 316), par. I.

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No. XIV.

*Assignment by
Commissioners of
Bankrupt
to a Provisional
Assignee.*

*An Appointment of a Provisional Assignee (1) by
Commissioners, and an Assignment to him of
the Bankrupt's Personal Estate.*

*Variations where it includes a Bargain and Sale of
Real Estates of the Bankrupt.*

THIS INDENTURE, made the day of
in the year of the reign, &c. and in the
year of our Lord . BETWEEN (*the com-* Parties.

(1) In order to prevent any part of the debts or other personalty belonging to the bankrupt being dissipated or disposed of by him before the choice of general assignees by his creditors, or to prevent an extent from the crown attaching upon the bankrupt's estate (which will affect such property only as the bankrupt was possessed of at the teste of the writ, *Attorney Gen. v. Capell*, 2 Show. 481; *the King v. Cotton*, 2 Ves. 289; *Rex v. Mann*, 2 Stra. 749; *Rorke v. Dayrell*, 4 Durnf. and E. 408; *Austin v. Whitehead*, 6 *ib.* 436; *ex parte Wydown*, 14 Ves. jun. 88), or a distress for rent (by the assignee removing them off the premises) or to provide for the carrying on the trade of the bankrupt, until general assignees can be chosen, or to dispose of property of a perishable nature, it is not unusual for the commissioners to make a provisional intermediate assignment to one of the principal creditors, or such other person as they may think proper, which they are authorised to do by 5 Geo. 2, c. 30, which provides, that "the said commissioners, or any part of them, shall and lawfully may as often as they shall see cause, for the better securing and preserving the bankrupt's estate, immediately appoint one or more assignee or assignees of his

Use of provi-
sional assign-
ment.

DEBTOR AND CREDITOR.	<i>missioners</i>) of, &c. being the major part of the commissioners named in a certain commission of bankrupt hereinafter mentioned, of the one part, and (<i>the assignee</i>) (1) of, &c. (a provisional assignee under the said commission) of the other part. WHEREAS a commission of bankrupt under the great seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, on the day of , was awarded and issued against (<i>the bankrupt</i>) of, &c. and he was thereupon duly found and declared a bankrupt (2). AND WHEREAS for the better securing and preserving the estate and effects of the said (<i>bankrupt</i>) for the benefit of his creditors, the said (<i>commissioners</i>) have thought it expedient to appoint the said (<i>assignee</i>) an assignee thereof,
Assignment by Commissioners of Bankrupt to a Provisional Assignee.	
Recital of commission.	
Of choice of provisional assignee.	

estate and effects, or any part thereof," and which assignees are required by the same act afterwards to assign to the *general* or ultimate assignees, should any such be chosen by the creditors.

This provisional assignment is however not a matter of course, and the expense of it will be allowed only in cases of necessity, as where an extent is apprehended or the like, *ex parte* Williams, 1 Madd. 141, where executions being threatened was said by Leach, Vice Chancellor, not to be a sufficient cause for a provisional assignment.

One provisional assignee sufficient.

(1) One or more provisional assignees may be appointed as the commissioners think proper, but as the purpose of such assignment is merely to take the property out of the bankrupt for the purposes mentioned in the preceding note, it is usual for them to appoint one person only, who is frequently one of their own messengers.

Bankrupt party.

If the bankrupt be made a party (and see *ante*, p. 643, n. (1) make him so of the second part.

Recitals.

(2) See fuller form of this recital *ante*, p. 644.

until some other person or persons shall be duly chosen for that purpose by the creditors of the said (*bankrupt*) in pursuance of the statutes made in that behalf. NOW THIS INDENTURE WITNESSETH, that in further execution of the hereinbefore in part recited commission, and by force and virtue thereof, and of the several statutes enabling them hereunto, and for the purposes hereinbefore mentioned, THEY the said (*commissioners*) commissioners as aforesaid, HAVE named and appointed, and by these presents Do name and appoint, the said (*assignee*) assignee of the estate and effects of the said (*bankrupt*) and for the purposes and by the authority aforesaid, and for and in consideration of the sum of 5s. of lawful money of England, to them in hand paid by the said (*assignee*) at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, THEY the said (*commissioners*) HAVE ordered, directed, bargained, sold, assigned, and set over, and by these presents Do, so far and in such manner as they lawfully can and safely may, order, direct, bargain, sell, assign, and set over unto the said (*assignee*) his executors, administrators, and assigns, ALL (1), every and singular the goods, wares, and merchandise, chattels, stock in trade, household stuff, implements of household, and other the personal estate, property, and ef-

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WITNESS, the
commissioners
appoint provi-
sional assignee.
And assign the
property.

(1) If the assignment be intended to include the real property of the bankrupt, add here the witnessing part and habendum of No. XII. *ante*, pp. 646, *et seq.* Real property.

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To hold to the
assignee in trust,
&c.

fects, of what nature or kind soever, which he the said (*bankrupt*), or any person or persons in trust for him, now is, or are, or at the time of his so becoming bankrupt as aforesaid, or otherwise, or at any time since, was or were possessed of, entitled unto, or in any wise interested in, or which he might or could dispose withal, [save (1) only and except the customary or copyhold lands and hereditaments, (if any) of him the said (*bankrupt*).]

TO HAVE AND TO HOLD all and singular the said estate, property, and effects, and other the premises hereby bargained, sold, ordered, directed, and assigned, or otherwise assured, or intended so to be, with their and every of their appurtenances, unto the said (*assignee*) his executors, administrators, and assigns, together with full power and authority to demand, recover, receive, and take possession, and dispose of the same, and every or any part thereof, but nevertheless in trust only for the immediate preservation thereof, to and for the use and benefit of the several creditors of the said (*bankrupt*) who have already sought, or who shall in due time hereafter seek

Copyholds.

(1) A doubt has been suggested in a preceding note, whether the commissioners have authority to except copyholds out of the assignment of the bankrupt's property to the *general* assignees chosen by his creditors, see *ante*, No. XII. p. 648, n. (3), but this doubt cannot arise with respect to their authority to do so out of a *provisional* assignment, as the words of sec. 30, of the 5 Geo. 2, authorise them to appoint such assignee of the bankrupt's estate and effects, "or of any part thereof," which evidently gives them a discretionary power to omit them, if they should see occasion.

relief under the said commission, or any renewed commission, according to the several statutes made concerning the same. AND (1) the said (*assignee*) doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said (*commissioners*) respectively, and their respective executors, administrators, and assigns, in the manner following, that is to say, that when and as soon as any other person or persons shall be duly chosen and appointed assignee or assignees of the estate and effects of the said (*bankrupt*) in his room or stead, and he or they shall be lawfully required thereunto (2), he the said (*assignee*) his executors or administrators, shall and will make and execute, or join with the said (*commissioners*) or other the commissioners named in the said commission, or any renewed commission, in the making and executing a good and sufficient assignment, or other assurance (3) of all and every the estate, property,

DEBTOR
AND
CREDITOR.

*Assignment by
Commissioners of
Bankrupt
to a Provisional
Assignee.*

Covenant by
provisional as-
signee to assign
to subsequent
assignees.

(1) This covenant by the provisional assignee to assign to the assignees who may be afterwards chosen by the creditors does not seem to be necessary, as he is required to do so by the act authorising his appointment; see 5 Geo. 2, c. 30, s. 30: he is also, by the same act and section, further subjected to a penalty on his refusal.

Covenant to
assign un-
necessary.

(2) This requisition is to be made in writing under the hand or hands of the new assignee or assignees; see 5 Geo. 2, c. 30, s. 30.

Requisition to
assign.

(3) By the 5 Geo. 2, c. 30, s. 30, it is provided that the provisional assignee or assignees appointed by the commissioners "shall or may be removed or displaced at the meeting of creditors for the choice of assignees, if they or the major part of them in value (whose respective debts amount to £10 or up-

Provisional as-
signee to assign
to general as-
signees.

DEBTOR
AND
CREDITOR.

*Assignment by
Commissioners of
Bankrupt
to a Provisional
Assignee.*

Assignee will
indemnify the
commissioners.

effects, and premises, hereinbefore assigned or otherwise assured to him as aforesaid, unto such assignee or assignees, his or their executors, administrators, and assigns, and also shall and will deliver up unto him and them all and singular the estate and effects of the said (*bankrupt*), which shall or may have come to the hands or possession of him the said (*assignee*) his executors or administrators, or of any other person or persons in trust for him or them, or otherwise dispose of the same, as the said commissioners or the major part of them shall direct or appoint. AND further, that he the said (*assignee*) his executors and administrators, shall and will from time to time, and at all times hereafter, save, defend, keep harmless, and indemnify (1) all and every the aforesaid commissioners, and their respective executors and administrators, agents and ser-

wards) then present shall think fit; and that such assignee or assignees as shall be so removed shall deliver up and assign to the newly appointed assignees all the estate and effects of the bankrupt which shall have been assigned to them, or come to their hands, and which estate and effects it is thereby declared shall be as effectually vested in such new assignee or assignees, as if the first assignment had been made to them by the said commissioners," and which act (see *ante*, p. 646, n. (2)), is, by 3 G. 4, c. 81, made to extend to bargains and sales by the commissioners.

Covenant to
indemnify com-
missioners.

(1) If the first assignee of the commission be a principal creditor of the bankrupt, this covenant is as reasonable when he is a provisional, as when he is an ultimate assignee; but where he is a mere trustee or surety of the property, it cannot, with any propriety, be required of him.—It is, however, I believe, always inserted.

vants, and goods, chattels, lands, and tenements, of and from all and all manner of actions, suits, costs, damages, and expenses whatsoever, which they, or any, or either of them, shall or may sustain, bear, pay, or be put unto, by reason of these presents, or any act, deed, matter, or thing whatsoever, by him the said (*provisional assignee*) his executors or administrators done or caused to be done, with or concerning the estate or effects of the said (*bankrupt*) or of any part thereof, by virtue of these presents. IN WITNESS, &c.

DEBTOR
AND
CREDITOR.

*Assignment by
Commissioners of
Bankrupt
to a Provisional
Assignee.*

. It is not declared by 5 Geo. 2, that an appointment of Enrolment. provisional assignees, or the assignment of the bankrupt's property to such assignees, shall be enrolled, but see *ante*, No. XII. p. 655, n. *.*; with respect to the necessity of enrolment, if it include a bargain and sale of real property.—See also *INTRODUCTION*, *ante*, p. i. *et seq.* (after p. 356), par. I.

Two parts of the assignment should be executed, one to be Two parts. retained by the commissioners, and the other delivered to the assignee.

DEBTOR
AND
CREDITOR.

*Assignment by
Provisional to
General
Assignees.*

No. XV.

*Assignment of the Personal Estate of a Bankrupt
by a Provisional Assignee to General Assignees (1).*

*Variations where the Real Estates of the Bankrupt
were conveyed to the Provisional Assignee.*

Parties.

THIS INDENTURE of parts, made the
 day of in the year of the
reign, &c. and in the year of our Lord ,
BETWEEN (*the provisional assignee*) of, &c. (a pro-
visional assignee appointed by virtue of a certain
commission of bankrupt hereinafter mentioned) of
the first part (*the commissioners*) (2) of, &c. being

Real property.

(1) As a provisional assignment is more usually of personal than of real estates, I have given the form of such assignment only, but have rendered it by means of subjoined variations easily convertible into a conveyance of real property.

Commissioners parties,

(2) As the provisional assignee is usually required by the assignment made to him from the commissioners, to assign and dispose of the property of the bankrupt in such manner as the major part of the commissioners shall direct, see No. XIV. p. 669, it is proper that they should be parties for the purpose of testifying such direction; but it does not seem requisite on any other account, as the act of 5 Geo. 2, c. 30, s. 30, requires the provisional assignee to assign to the new assignees at the requisition of such new assignees and not of the commissioners. See *post*, p. 675, n. (1).

the major part of the commissioners named in the said commission, of the second part, and (*the general assignees*) of, &c. (general assignees appointed under the same commission) of the third part. WHEREAS a commission of bankrupt under the great seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, on the day of was awarded and issued against (*the bankrupt*) of, &c. and he was thereupon duly found and declared a bankrupt(1).

DEBTOR
AND
CREDITOR.

Assignment by
Provisional to
General
Assignees.

Recital of com-
mission.

AND WHEREAS by an indenture bearing date on or about the day of last past, and made or expressed to be made between the said (*commissioners*) of the one part, and the said (*provisional assignee*) of the other part, the said (*provisional assignee*) was appointed a provisional assignee of the estate and effects of the said (*bankrupt*) for preserving and securing the same for the use and benefit of the creditors of the said (*bankrupt*) who had sought or might thereafter seek relief under the said commission, according to the statutes made in that behalf; and in which said indenture the said (*provisional assignee*) covenanted and agreed with the said (*commissioners*) at any time thereafter (when thereunto required) to assign or join with the said commissioners in assigning the same, unto such person or persons as might thereafter be duly chosen assignee or assignees of the estate and effects of the said (*bank-*

Recital of pro-
visional assign-
ment.

(1) For a fuller form of recitals, see *ante*, p. 644.

Faller recitals.

DEBTOR
AND
CREDITOR.

*Assignment by
Provisional to
General
Assignees.*

Of choice of
assignees.

WITNESS, that
in consideration,
&c.

rupt) for the benefit of his creditors, or otherwise dispose of the same as the said (*commissioners*) should direct. AND WHEREAS at a meeting of the major part of the commissioners in the said commission named, at the Court of Commissioners of Bankrupt in the city of London on the day of last past, pursuant to notice in the London Gazette for that purpose given, the major part in value of the creditors of the said (*bankrupt*) then present and duly qualified for that purpose mentioned, nominated and chose the said (*general assignees*) to be assignees of the estate and effects of the said (*bankrupt*) in lieu of the said (*provisional assignee*) who hath been required by the said commissioners to execute such assignment of the estate and effects of the said (*bankrupt*) as hereinafter is expressed. Now THIS INDENTURE WITNESSETH, that in pursuance of the trusts in the hereinbefore in part recited indenture contained in that behalf [and for and in consideration (1) of the sum of five shillings of lawful current money of England to the said (*provisional assignee*) in hand well and truly paid by the said (*general assignees*) at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged,]

Consideration.

(1) The expression of the consideration is placed within brackets, as being wholly unnecessary where the deed is intended to pass the personal estate only of the bankrupt, but where it includes real property also, a pecuniary consideration is considered to be proper.

He the said (*provisional assignee*) with the privity and by the direction of the said (*commissioners*) testified by their respectively signing and sealing these presents, HATH bargained, sold, assigned, transferred, and set over, and by these presents DOTH bargain, sell, assign, transfer, and set over, [and the said (*commissioners*) (1) HAVE ratified and confirmed, and by these presents Do ratify and confirm unto the said (*general assignees*) their executors, administrators, and assigns, ALL (2) and singular the personal estate and effects whatsoever of the said (*bankrupt*) comprised in the said hereinbefore in part recited indenture of assignment of the day of , and thereby assigned to the said (*provisional assignee*) or mentioned or intended so to be as aforesaid, and all the estate, right, title, interest, property, claim, and demand whatsoever of them the said (*provi-*

DEBTOR
AND
CREDITOR.

Assignment by
Provisional to
General
Assignees.

The provisional
assignee assigns.

And the com-
missioners con-
firm.

(1) As the statute of 5 Geo. 2, c. 30, s. 60, authorises the commissioners to assign the estate and effects of the bankrupt to a provisional assignee, and directs such assignee to assign and deliver up the same to the future assignees to be chosen as by that act is directed (after which no estate remains in them) and moreover declares that the estate and effects so assigned shall be as effectually vested in such future assignees as if the same had been originally assigned to them by the commissioners, there appears to be no reason for the commissioners to join in the assignment, unless for the justification of the provisional assignee, where he is a stranger to the bankrupt's affairs.

Commissioners
confirming.

(2) If the real *as well* as the personal estate of the bankrupt was conveyed to the provisional assignee, add here the witnessing part and habendum of No. XII. *ante*, p. 646, *et seq.* or make a separate bargain and sale by him to the general assignees in a form similar to that deed.

Real property.

DEBTOR
AND
CREDITOR.

Assignment by
Provisional to
General
Assignees.

To HOLD to the
general assign-
ees, in trust
for creditors.

Covenant by
assignees to
sell, &c.

sional assignee) and (*commissioners*) as such assignee and commissioners respectively as aforesaid, of, in, or to the same. To HAVE AND TO HOLD, receive, possess, and take the estate and effects hereby bargained, sold, and assigned, or otherwise assured, or intended so to be, unto the said (*general assignees*) their executors, administrators, and assigns; UPON TRUST nevertheless to and for the benefit and advantage of all and every the creditors of the said (*bankrupt*) who have already sought or shall hereafter in due time seek relief under the said commission, and as to any surplus thereof, in trust for the said (*bankrupt*) his executors, administrators, and assigns, according to the conditions and directions of or by the several statutes in that behalf made and provided, and to, for, and upon no other use, trust, intent, or purpose whatsoever. AND the said (*general assignees*) for themselves severally and respectively, and for their several and respective heirs, executors, and administrators (1), but not the one for the other or others of them, or for the executors or administrators of the other or others of them, but each for himself only do and doth hereby covenant, promise, and agree with and to the said (*commissioners*) their executors, administrators, and assigns, in manner following, that is to say, that they the said (*general*

Real property.

(1) If the conveyance be of real property, make this covenant accord with that *ante*, p. 652.

assignees) shall and will, with all convenient speed, and by all lawful and equitable ways and means whatsoever, collect and get in all and every the estate and effects of the said (*bankrupt*). hereby assigned to them as aforesaid. AND also shall and will from time to time and at all times hereafter upon every reasonable notice or request to them given or made for that purpose, render and give unto the said (*commissioners*) or other the commissioners in and by the said commission, or any renewed commission which may be awarded against the said (*bankrupt*) named or to be named, a true, just, and perfect account in writing under his or their hand or hands, of the money or other satisfaction or value which shall come to their hands respectively, by virtue or means of these presents or otherwise, from or out of the estate and effects of the said (*bankrupt*), and shall and will well and truly pay or cause to be paid over the same and every part thereof, after deducting all reasonable expenses incurred in the execution of the said trust, unto them the said commissioners or to such other person or persons as they shall appoint, to the end that the same may be ordered, disposed, distributed, and divided unto and amongst all and every the creditors of the said (*bankrupt*) who have sought or shall in due time seek relief under the said commission, according to the limitations and directions of the several statutes now in force, concerning the premises. AND LASTLY, that they the said (*assignees*) their executors or admini-

DEBTOR
AND
CREDITOR.

Assignment by
Provisional to
General
Assignees.

And indemnify
commissioners.

DEBTOR
AND
CREDITOR.

*Assignment by
Provisional to
General
Assignees.*

strators, shall and will from time to time and at all times hereafter, save, defend, keep harmless, and indemnified all and every the said commissioners in the said commission, or any renewed commission, named or to be named, and also the said (*provisional assignee*) and every of them, and their respective executors and administrators, and agents and servants, and their and every of their goods and chattels, and lands and tenements of and from all and all manner of actions, suits, costs, damages, and expenses whatsoever, which they, or any or either of them, shall or may sustain, bear, pay, or be put unto for or by reason of these presents, or any other act or thing whatsoever by them or any or either of them lawfully done, by virtue of the said commission, with or concerning the estate or effects of the said (*bankrupt*) or any part thereof. IN WITNESS, &c.

Enrolment.

. No enrolment of assignments from provisional to new assignees is required by the act of 5 Geo. 2, directing such assignment to be made; see sec. 30 of the act; but it should seem to be necessary under the 13 Eliz. c. 7, s. 2, if the commissioners be parties, and see *ante*, No. XII. p. 655, n. *.*; and if it be of real property, enrolment will also be necessary; see also INTRODUCTION, *ante*, p. i. *et seq.* (after p. 356) Part I.

DEBTOR
AND
CREDITOR.

No. XVI.

An Assignment by Assignees of a Bankrupt (with the Consent of Creditors) to a Person advancing a Poundage on their Debts (1).

Assignment
by Assignees
of Bankrupt
to a Creditor.

Variations as below.

THIS INDENTURE made the day of ,
in the year, &c. and in the year of our Lord
 . BETWEEN (*the bankrupt assignees*) of, &c.
 (assignees of the estate and effects of (*the bankrupt*)) of, &c. under a commission of
bankruptcy hereinafter mentioned, of the first part,
(*the bankrupt*) of, &c. of the second part, and
(*creditors*) being creditors of the said (*bankrupt*)
of the third part, and (*creditor-assignee*) of, &c.
being a person to whom his estates and effects have
been agreed to be assigned as hereafter expressed,
of the fourth part. WHEREAS, &c. (*recite the com-
mission of bankruptcy*) (2). AND WHEREAS by in-
denture of assignment bearing date on or about
the day of and made or men-

Recitals of com-
mission and as-
signment to
assignees.

(1) It not unfrequently happens that after the issuing of a commission, the creditors, to prevent further expenses, agree to a proposition to accept of a pound rate, to be paid by a friend of the bankrupt, in satisfaction of their debts; in which case, the above may be the form of an assignment to him.

(2) See recital of a commission, *ante*, pp. 444. 646. n. (1).

DEBTOR
AND
CREDITOR.

Assignment
by Assignees
of Bankrupt
to a Creditor.

tioned to be made between, &c. , being
of the commissioners named in the
commission therein recited of the one part, and
the said (*bankrupt-assignees*) of the other part,
the said commissioners ordered, assigned, and set
over unto the said (*bankrupt-assignees*) their exe-
cutors, administrators, and assigns, ALL (1) and
singular the goods, household stuff, implements of
household, and stock in trade, and all and sin-
gular other the goods and chattels, debts, sum
and sums of money, and rights and credits then
due and owing unto the said (*bankrupt*), and all
other his personal estate and effects with their
appurtenants, To HOLD the same IN TRUST for the
use and benefit of the said (*bankrupt-assignees*)
and other the creditors of the said (*bankrupt*) who
had then sought or might thereafter seek relief
under the said commission, according to the di-
rections and limitations of the several statutes in
that behalf made and provided, as by the said
indenture, reference thereto being had, will more
fully appear. AND WHEREAS since the said as-
signment the said (*creditor-assignee*) hath pro-
posed to pay to the other of the said creditors the
sum of shillings in the pound upon their
respective debts on having the estate and effects
of the said (*bankrupt*) assigned to and the said
creditors executing such release to the said
(*bankrupt*) as hereinafter is expressed or re-
ferred to, to which they have respectively agreed.

Real property.

(1) If the property assigned be of a real nature, recite the bargain and sale by the commissioners; see *ante*, p. 641.

NOW THIS INDENTURE WITNESSETH, that the said (bankrupt-assignees) with the privity and full consent and approbation, and by the express direction of all and every other the creditors of the said (bankrupt) parties hereto, testified by their signing and sealing these presents, HAVE, and each of them HATH, granted, bargained, sold, assigned, transferred, and set over, and by these presents Do, and each of them DOTH, bargain, sell, assign, transfer, and set over; and for and in consideration of the sum of shillings for every twenty shillings or pound sterling (and so in proportion for every greater or less sum) so due to them the said creditors respectively, parties hereto, from the said (bankrupt) in hand well and truly paid to them respectively by the said (creditor-assignee) at or before the sealing and delivery of these presents, [that is to say (1), the sum of £ , in full for the sum of £ , due to the said (); the sum of £ , in full for the sum of £ , due to the said (); the sum of £ , in full for the sum of £ , due to the said (); and the sum of £ , in full for the sum of £ , due to the said (), &c. &c.]; the receipt of which said several sums in full satisfaction and discharge of their respective debts, they the said creditors,

DEBTOR
AND
CREDITOR.

*Assignment
by Assignees
of Bankrupt
to a Creditor.*

WITNESS, that
bankrupt-
assignees in
consideration,
&c. assign.

(1) Or instead of the sum paid to each creditor, say,

Schedule.

“As is more particularly set forth or mentioned in the first and second columns of the schedule hereunder written or hereunto annexed.”

DEBTOR
AND
CREDITOR.

*Assignment
by Assignees
of Bankrupt
to a Creditor.*

And creditors
confirm.

Debts and
effects to cre-
ditor-assignee
for his own use.

parties hereto, do hereby severally acknowledge, and of and from the same do, and each of them doth acquit, release, exonerate, and for ever discharge, as well the said (*bankrupt*) his executors and administrators, as him the said (*creditor-assignee*) by these presents, They, and each and every of them the said creditors parties to these presents of the second and third parts, as far as in them respectively lies, or as they respectively lawfully can or may, HAVE, and each of them HATH bargained, sold, assigned, ratified, and confirmed, and by these presents Do and DOTH bargain, sell, assign, ratify, and confirm unto the said (*creditor-assignee*) his executors, administrators, and assigns, ALL (1) and singular the goods and chattels, debts, sum and sums of money, and rights and credits, bonds, bills, notes, and other securities whatsoever, of or belonging to, or in the custody or power of, them the said (*bankrupt-assignees*) as such assignees of the estate and effects of the said (*bankrupt*) as aforesaid; and all the estate, right, title, and interest whatsoever of them and each and every of them respectively, in or to the same. To HAVE AND TO HOLD the said goods and chattels, debts, sum and sums of money, rights, and credits, and all and singular other the premises hereinbefore assigned or otherwise assured, or intended so to be, and every part thereof, unto and by him the said

Real property.

(1) If the property of the bankrupt, or any part of it, be of a real nature, make the conveyance to correspond with that circumstance, as *ante*, p. 648.

(*creditor-assignee*) his executors, administrators, and assigns, to and for his and their own proper use and benefit, and to and for no other use, intent, or purpose whatsoever. AND THIS INDENTURE FURTHER WITNESSETH (1), that for the considerations hereinbefore expressed, they the said creditors, parties hereto of the second and third parts respectively, HAVE, and each and every of them HATH remised, released, and for ever quit claimed, and by these presents for themselves severally and respectively, and their several and respective executors, administrators, assigns, and partners, Do and each and every of them DOTR remise, release, and for ever quit claim unto the said (*bankrupt*) his executors and administrators, and also unto the said (*bankrupt-assignees*), ALL and every the debts and demands whatsoever which they the said parties respectively, or any or either of them now have, or hath, or ever had, upon or against the said (*bankrupt*) or the said (*assignees*) as such assignees of the estate and effects of the said (*bankrupt*) as aforesaid. AND, &c. (2). AND the said (*bankrupt-assignees*) and (*bankrupt*) do, and each of them doth, by these presents make, ordain, constitute, and appoint the said (*creditor-assignee*) the true and lawful attorney, irrevocable of them and every of them respectively, (but in

DEBTOR
AND
CREDITOR.

*Assignment
by Assignees
of Bankrupt
to a Creditor.*

Release to
bankrupt and
assignees.

Letter of at-
torney.

(1) This release, for the greater satisfaction and security of the debtor, may be by a separate instrument to be retained in his own hands; for the form of which see WILDE'S SUPPLEMENT, title "Release." Release.

(2) Here may be added a similar release from the bankrupt-assignees to the debtor, by a FURTHER WITNESS.

DEBTOR
AND
CREDITOR.

*Assignment
by Assignees
of Bankrupt
to a Creditor.*

Covenant by
creditors and
bankrupt to
indemnify the
assignees.

trust for him the said (*creditor-assignee*) in their or any or either of their names or name, place and stead, or in the names or name of them the said (*bankrupt-assignees*) or (*bankrupt*) or either of them or otherwise, to demand and receive of and from all and every person and persons whatsoever all and every sum and sums of money, debt and debts, and other effects due, owing, or belonging to the estate of the said (*bankrupt*), and not already by them the said (*assignees*) converted into money, disposed of, or received, and also for that purpose to institute and prosecute all and every such action and actions, suit and suits; and other proceedings, acts, matters, and things whatsoever, as he the said (*creditor-assignee*) shall think proper or expedient for the recovering and getting in the same or any part thereof, and in the names or name aforesaid, or otherwise, to make, sign, and give proper and effectual receipts, releases, and discharges for the same. AND the said creditors parties to these presents of the third and fourth parts respectively, and also the said (*bankrupt*), for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, do hereby covenant, promise, and agree to and with the said (*bankrupt-assignees*) and each of them respectively, and their respective executors and administrators, by these presents, that they the said creditors parties hereto of the third and fourth parts respectively, and he the said (*bankrupt*) or some or one of their or his executors or administrators, shall and will from time to time, and at all times hereafter, well and sufficiently

save, defend, keep harmless and indemnified the said (*bankrupt-assignees*) and each of them, and their respective executors and administrators, and their and every of their lands and tenements, and goods and chattels, of, from, and against all and all manner of actions, suits, costs, losses, damages, and expenses whatsoever which they or any or either of them shall or may sustain or be put unto by reason of the said in part recited indenture of assignment of the day of or the trusts thereof, or by reason of the assignment hereby made, or any other matter or thing by them or either of them lawfully done or executed, under or by virtue of the said in part recited commission, or their or either of their otherwise lawfully intermeddling with or concerning the estate and effects of the said (*bankrupt*) or any part thereof, and also of, from, and against all debts and lawful claims and demands heretofore or hereafter made or to be made by any other person or persons whatsoever, upon or against the said (*assignees*) or either of them, as assignees of the estates and effects of the said (*bankrupt*) their or either of their heirs, executors, or administrators, for or in respect of any debt or debts now or hereafter due or accruing from the said (*bankrupt*) his heirs, executors, or administrators (1). IN WITNESS, &c.

DEBTOR
AND
CREDITOR.

*Assignment
by Assignees
of Bankrupt
to a Creditor.*

(1) See *ante*, p. 681, n. (1).

DEBTOR
AND
CREDITOR.

*Assignment by
Insolvent Debtor
to Provisional
Assignee.*

No. XVII.

*Assignment by an Insolvent Debtor to a Provisional
Assignee (1).*

THIS INDENTURE, made the day of
in the year, &c. , and in the year of
our Lord . BETWEEN (*the insolvent*) late
of, &c. , an insolvent (2) debtor, now a pri-

1 Geo. IV.
c. 119.

(1) By the act 1 Geo. IV. c. 119, s. 4, it is declared that any person within that part of the kingdom called England (but not in Scotland or Ireland, nor if a crown debtor) who shall be in custody for debt or contempt of court for nonpayment of money, may within fourteen days next after the commencement of such actual custody (or within such further time as the insolvent debtors court shall think reasonable), apply by petition to such court to have liberty of his person against the demands of his creditors, such prisoner at the time of petitioning duly executing a conveyance and assignment of all his estate, right, title, interest, and trust to all his real and personal estate and effects, (except wearing apparel, bedding, and other such necessaries, not exceeding in the whole the value of twenty pounds), so as to vest all such real and personal estate and effects in the provisional assignee of the court, subject to a proviso that in case such person shall not obtain his discharge, such conveyance and assignment shall after the dismissal of his petition be void.

And it has been held that any agreement by a debtor with his creditors not to take advantage of the act is nugatory; see *Parish v. Wolstancroft*, 3 Smith Rep. 51.

Infant, &c.

(2) It may here be noted that an infant cannot be an insolvent debtor within the provisions of 49 Geo. III. c. 115, ss. 14, 49, as

soner in the prison, of the one part, and
 (*a provisional assignee*) of, &c. provisional
 assignee of the estate and effects of insolvent
 debtors in England, pursuant to an act of parlia-
 ment passed in the year of the reign of King
 George the Fourth, of the other part. WHEREAS
 the said (*insolvent*) hath this day subscribed and
 preferred his petition to the Court for Relief of
 Insolvent Debtors, praying for his discharge by vir-
 tue of the aforesaid act, and is desirous of making
 such assignment of his estate and effects as is re-
 quired by the said act. Now THIS INDENTURE
 WITNESSETH, that in pursuance of and in obedience
 to the aforesaid act, he the said (*insolvent*) HATH
 bargained, sold, conveyed, and assigned, and by
 these presents DOTH bargain, sell, convey, and
 assign, unto the said (*provisional assignee*) as such
 provisional assignee as aforesaid, his heirs, suc-
 cessors (1), and assigns, all the estate, right, title,
 interest, and trust of him the said (*insolvent*) in or
 to all and singular the real and personal estate
 and effects whatsoever, and whether in possession,
 reversion, remainder, expectancy, or otherwise
 except the wearing apparel, bedding, and other
 like necessities of the said (*insolvent*) and his
 family, not exceeding in the whole the sum of

DEBTOR
AND
CREDITOR.

Assignment by
Insolvent Debtor
to Provisional
Assignee.

Recital of
petition.

Witness,
debtor conveys
his real and per-
sonal estate to
provisional
assignee.

he cannot legally be in custody for debt, *Burton v. Haworth*,
 5 Maud. 50; but a feme covert may, see 3 Geo. 4, c. 123, s. 12;
 as may also an idiot, see *ib.* s. 18; see also *post*, pp. 699, 700,
 marg.

(1) See 3 Geo. 4, c. 123, s. 1, *post*, rider (A), p. 698.

**DEBTOR
AND
CREDITOR.**

*Assignment by
Insolvent Debtor
to Provisional
Assignee.*

To HOLD
in trust for
scheduled
creditors.

Assignment to
be void if in-
solvent not dis-
charged.

£20 (1), together with all deeds, evidences, and writings touching and concerning the said estate and effects, or any part thereof. To HAVE AND TO HOLD the said real and personal, and other the estates and effects hereinbefore conveyed, assigned, or otherwise assured, with their and every of their rights, members, and appurtenants, unto him the said (*provisional assignee*) his heirs, successors (2), and assigns, according to the natures, properties, and tenures thereof, respectively, absolutely, and for ever, But in trust, nevertheless, for the use, benefit, and advantage of such several persons as shall be named or specified as creditors or as claiming to be creditors of the said (*insolvent*) in his schedule to be filed in the aforesaid court, under the direction of the same court, and to and for such other uses, intents, and purposes, and in such manner and form as in the said act are declared or expressed concerning the same (3). PROVIDED ALWAYS, and these presents are upon this express condition nevertheless, that in case the said (*insolvent*) shall not obtain a discharge, by virtue of the said act, then the conveyance and assignment hereinbefore made, or expressed to be made as aforesaid, and these presents shall from and after the dismissal of the petition of the said

(1) See *ante*, p. 686, n. (1).

(2) See 3 Geo. 4, c. 123, s. 1, *post*, p. 698.

(3) See the powers, duties, &c. of the provisional-assignee, 3 Geo. IV. c. 123, ss. 1, 2, (*post*, rider (A),) p. 694, *et seq.*

Powers, &c.
of provisional
assignee.

(*insolvent*) praying for such discharge, be null and void (1), to all intents and purposes whatsoever, any thing herein contained to the contrary thereof in anywise notwithstanding. IN WITNESS, &c.

DEBTOR
AND
CREDITOR.

*Assignment by
Insolvent Debtor
to Provisional
Assignee.*

. By 1 Geo. IV. c. 119, s. 34, it is enacted that no conveyance, assignment, letter of attorney, affidavit, or other proceedings whatsoever before or under any order of the said court, or before any justices of the peace acting in the execution of this act, shall be liable to the payment of or be chargeable with the payment of any stamp or other duty whatsoever. See also INTRODUCTION, *ante*, p. i. *et seq.* (after p. 356) Part II.

(1) See *ante*, p. 686, n. (1).

DEBTOR
AND
CREDITOR.

*Assignment by
Provisional As-
signee of Insol-
vent to Acting
Assignee.*

No. XVIII.

*Assignment of an Insolvent Debtor's Estate by a
Provisional Assignee to an Acting Trustee under
the Insolvent Debtors' Act (1).*

THIS INDENTURE, made the _____ day of _____

By sec. 2 of the
act of 1 Geo. IV.
c. 119, assignees
to be appointed.

Copyhold
estates to be
assigned.

(1) By the act of 1 Geo. 4, c. 119, s. 2, it is enacted that *after* the court shall adjudge an insolvent to be entitled to his discharge, (and by 3 Geo. 4, c. 123, *before*) the court may appoint a proper person or proper persons to be assignee or assignees of his estate and effects; to whom the estate, effects, rights, and powers vested in the provisional assignee, shall immediately be assigned by him in trust for the creditors, in respect of, or in proportion to, their respective debts; and in case any person discharged shall be entitled to any copyhold or customary estate, the assignment to such assignee or assignees shall be entered on the court rolls of the manor of which such copyhold or customary estate shall be holden; and thereupon it shall be lawful for such assignee or assignees to surrender or convey such copyhold or customary estate to any purchaser or purchasers thereof, as the court shall direct, and the rents and profits thereof shall be in the meantime received by such assignee or assignees, for the benefit of the creditors, and of every such assignment as aforesaid, whether to a provisional or other assignee or assignees (being duly entered) an office copy shall be sufficient evidence for all intents and purposes.

, in the year of our Lord . BETWEEN
(the provisional assignee) of, &c. , the pro-
visional assignee of the estate and effects of insol-
vent debtors in England, appointed pursuant to
an act of parliament passed in the year of his
Majesty King Geo. IV. in that behalf, of the one
part, and *(an acting assignee)* of, &c. , being an
assignee appointed by the court for relief of in-
solvent debtors to be assignee of the estates
and effects of the said insolvent, of the other part.
WHEREAS by indenture bearing date the
day of , between *(the insolvent)* of, &c.
of the one part, and the said *(provisional assignee)*
of the other part, all the estate, right, title, in-
terest, and trust of the said *(insolvent)* to all his
real and personal estate and effects, in possession,
reversion, remainder, or expectancy, except the
wearing apparel and other such necessities, of
the said *(insolvent)* and family, not exceeding in
the whole the sum of £20, were, in pursuance
of the said act, and by order of the said court,
conveyed and assigned to the said *(provisional*
assignee) as such provisional assignee as aforesaid,
his successors, and assigns. AND whereas it is
expedient that the same should now be vested in
the said *(acting assignee)* so appointed by the said
court as aforesaid, NOW THIS INDENTURE WITNESS-
ETH, that in obedience to the said act of Parlia-
ment, and to an order of the court for relief of
insolvent debtors, and in consideration of the sum
of ten shillings of lawful English money by the
said *(acting assignee)* to the said *(provisional as-*

DEBTOR
AND
CREDITOR.

*Assignment by
Provisional As-
signee of Insol-
vent to Acting
Assignee.*

Recital of pro-
visional assign-
ment.

WITNESS,
provisional as-
signee assigns to
acting assignee.

DEBTOR
AND
CREDITOR.

Assignment by
Provisional As-
signee of Invol-
unt to Acting
Assignee.

TO HOLD in
trust for the
creditors.

signee) in hand paid at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged) he the said (*provisional assignee*) HATH bargained, sold, conveyed, assigned, and set over, and by these presents DOTH bargain, sell, convey, assign, and set over unto the said (*acting assignee*) his heirs, executors, administrators, and assigns, all the estate, right, title, interest, and trust, of, in, and to the real and personal estate and effects whatsoever and wheresoever, and of what nature or kind soever, which by virtue of the said in part recited indenture now are or is in any way vested in the said (*provisional assignee*) as such provisional assignee as aforesaid, together with their and every of their rights, members, and appurtenances. TO HAVE AND TO HOLD, receive, and take the said real and personal estate and effects hereby conveyed and assigned or otherwise assured respectively, or intended so to be, with their and every of their rights, members, and appurtenances unto the said (*acting assignee*) in the manner following, that is to say, as to so much and such part thereof as is of a freehold or copyhold nature or tenure, to the use of him the said (*acting assignee*) his heirs and assigns for ever, and as to so much and such part thereof as is of a personal or chattel nature, unto him the said (*acting trustee*) his executors, administrators, and assigns; subject only to such mortgage or mortgages, or other charges or incumbrances, if any, as the same respectively are subject to. AND as to the whole of the said estate

and effects, as well real as personal, IN TRUST for the benefit and advantage, under the direction of the said court, of the several persons named or specified as creditors, or as claiming to be creditors, of the said (*insolvent*) in his schedule filed in the said court, and against whose demands the said (*insolvent*) has, by order of the said court, been discharged, and to and for such other uses, intents, and purposes as are in and by the said act made, declared, or expressed concerning the same respectively (1), and to and for no other use, intent, or purpose whatsoever. IN WITNESS, &c.

DEBTOR
AND
CREDITOR.

*Assignment by
Provisional As-
signee of Insol-
vent to Acting
Assignee.*

(1) See the trusts and directions of the insolvent acts, *post*, Trusts, &c. rider (A), p. 694; see also INTRODUCTION, *ante*, p. i. *et seq.* (after p. 356) Part II.

DEBTOR
AND
CREDITOR.

Insolvent Acts.

(A). *Abstract of Directions for the Conduct of Assignees under the Insolvent Debtors' Act (1).*

As the duties and powers of the assignees under the insolvent acts are not usually inserted in the deed of assignment, an abstract of the act, so far as concerns such duties, &c. is here given, for the guidance of such assignees in the execution of their trusts.

Sale of estate
and effects of
the prisoner to
be made,

as major part
of creditors shall
direct.

Assignees to
account every
three months.

By the act of 1 Geo. 4, c. 119, it is enacted, s. 7, "That the assignee or assignees of an insolvent's estate shall, with all convenient speed, after accepting an assignment or conveyance thereof, get in the same, and, with all convenient speed, make sale thereof; and if any part be real estate, the same, within the space of two months after such assignment and conveyance, (or other time as the court may direct) shall be sold by public auction, in such manner, and at such place or places, as the major part of the creditors assembled on any notice in writing published in the London Gazette, and in some daily paper printed and published in London, or within the bills of mortality, if the insolvent there resided, and if elsewhere, then in some printed newspaper which shall be published and generally circulated in or near the place in which he resided, thirty days before any such sale, shall, under his, her, or their hand or hands, approve; and every such assignee or assignees, at the end of three months at the farthest from the time of accepting the assignment or conveyance, (and so from time to time as occasion shall require, shall make up his or their accounts, on oath in writing, before an officer of the said court, or a justice of the peace of the county or place in which he or they shall reside,) and thirty days notice of the making of

(1) All insolvent acts are to be construed beneficially for the creditors; see *Edgell v. Haywood*, 3 Atk. 352.

every dividend shall be published, in like manner as a meeting of creditors."

Sec. 8 enacts, " That if insolvents be entitled to annuities for their own lives, or other uncertain interests, or to reversionary or contingent interests, or to property under such circumstances that the immediate sale thereof, for payment of their debts, would be prejudicial to them, the court may make such order, touching the sale or disposition of such property, as it shall seem reasonable, considering the rights of the creditors of such prisoner to payment of their demands, and the future benefit of such prisoner after payment of his or her debts, and upon such terms and conditions, with respect to the allowance of interest on debts not bearing interest, or other circumstances, as to the said court shall seem just; and if it shall appear to the said court that the debts of such prisoner can be discharged by means of money raised by way of mortgage on any property of such prisoner, instead of raising the same by sale, it shall be lawful for the said court so to order, and to give all necessary directions for such purpose, and generally to direct all things which may be proper for the discharge of the debts of such prisoner, in such manner as may be most consistent with the interests of such prisoner in any surplus of his or her effects after payment of such debts."

Sec. 9 provides, " That in case the insolvent, or any of his creditors, or the said court, shall at any time be dissatisfied with the account of any assignee or assignees, or in case any such assignee or assignees shall neglect to render an account, or shall neglect to dispose of the property, or collect the effects of the insolvent, or shall in any manner waste or mismanage the estate or effects, or neglect to make a due distribution thereof, the court or any such creditor may take all such measures as shall be necessary for the compelling and rendering of such account, and the due investigation thereof, and the proper disposition and distribution of the effects, and to award costs against any of the parties; and the decisions of the said court thereon shall be final and conclusive."

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AND
CREDITOR.

Insolvent Acts.

As to the disposal of property in special cases.

Property may be mortgaged, if more beneficial.

If assignees neglect to do their duty, court may direct inquiry.

DEBTOR
AND
CREDITOR.

Insolvent Acts.

Assignees not to
commence suits
without consent
of creditors.

Powers of insol-
vent extended
to assignees.

Assignees may
make composi-
tion for debts
owing to insol-
vent.

Court may ap-
point new as-
signees in case
of death or re-
moval.

Sec. 11 declares, "That no suit in law shall be proceeded in further than an arrest on mesne process, or suit in equity be commenced by any assignee or assignees, without the consent of the major part in value of the creditors met pursuant to fourteen days' notice to be given in the London Gazette, or other newspaper published in the neighbourhood of the last residence of the insolvent, and without the approbation of one of the commissioners of the court."

Sec. 12 enacts, "That where insolvents are seised and possessed of lands, tenements, and hereditaments, to hold for the term of their natural lives, with power of granting leases and taking fines, reserving small rents on such estate, for one, two, or three lives, in possession or reversion, or for some number of years determinable upon lives, or have powers over such real or personal estate which such prisoners could execute for their own advantage, and which said powers ought to be executed for the benefit of the creditors of such prisoners, all and every such powers shall be thereby vested in the assignee or assignees, so far as the prisoner could by law vest such power in any person to whom he might lawfully have conveyed such property, to be by such assignee or assignees executed for the benefit of the creditors."

Sec. 13 provides, "That the assignee or assignees, with the consent of the major part in value of the creditors present at a meeting to be had on fourteen days' notice in the London Gazette, or within the weekly bills of mortality, if the insolvent was then in custody, and if not, then also in some newspaper published in the county or place in or near which he was resident, and with the approbation of one of the commissioners of the court, to make compositions with any debtors or accountants to such insolvent, and to submit to arbitration any difference or dispute relating to his estate and effects."

Sec. 14 enacts, "That in case any assignee shall be unwilling to act, or in case of his death, or incapacity, or misconduct, the court, on application by any creditor, may appoint a new assignee or assignees, and oblige any assignee

who shall be removed, and the heirs, executors, administrators, and assigns of any deceased assignee, to account for and deliver up all such estate and effects, books, papers, writings, deeds, and all other evidences relating thereto, as shall remain in his or her hands; and from and immediately after such appointment, all the estate, effects, rights, and powers of the said prisoner, vested either in the provisional assignee or such new assignee or assignees as aforesaid, shall become, and the same are by the said act vested in such new assignee or assignees."

Sec. 15 enacts, "That in case any assignee or assignees, or his or their representatives, shall not deliver over any part of such estate or effects, or pay the balance of the produce thereof, may order him or them to be arrested and committed to the county gaol, to remain without bail until conformity."

Sec. 38 provides, "That nothing in the act shall entitle any assignee or assignees to the pay, or pension, or income of an officer of the army or navy, or in the naval or military service of the East India Company, or of a beneficed clergyman or curate; but such assignee or assignees may apply for a sequestration of the profit of any such benefice, for the payment of the debts of any such clergyman, and the court may order such portion of the pay, or half-pay, or pension of any such officer of the army or navy, or naval or military service of the East India Company, as the secretary at war, or the lords commissioners of the admiralty, or the court of directors of the United East India Company, shall consent to be paid to the assignee or assignees."

Sec. 46 authorises "Assignees from time to time to apply to the court, if they shall see occasion, that insolvent may be further examined, after his discharge, as to any matters or things relating to his estate and effects."

Sec. 47 enacts, "That the court shall, at the end of six months after the appointment of an assignee or assignees, at the request of any one or more creditors, examine him or them, upon oath or otherwise, touching his or their receipts and payments, and thereupon order the money in hand to be paid into the court, and that such dividend be made as

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Insolvent Acts.

Assignees not delivering over balance may be arrested, &c.

Assignees' power not to extend to officers of the army, &c. or clergyman.

Assignees may examine debtors after discharge.

Assignees to be examined within six months after appointment.

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CREDITOR.

Insolvent Acts.

Dividends remaining in hand for twelve months to be paid into court.

This act not to affect any commission of bankrupt.

3 Geo. IV.
c. 123 :

Provisional assignee may take possession.

All property vested in him shall go to his successor.

Provisional assignee may sue in his own name.

Assignment to assignees to vest by relation from time of first assignment.

may be thought fit; and if any dividend remain in the hands of such assignee or assignees for twelve months following the declaring thereof, the court may order the same to be paid into court; and in default of payment, may make summary remedy for the purpose, by a distress and sale of the goods and chattels of such assignee or assignees, and if no sufficient distress, then commit the offender to the common gaol or house of correction, until the said court shall make further order."

Sec. 51 provides, "That the act shall not extend to defeat the proceedings in any commission of bankrupt issued against insolvents, before they shall have obtained an order for discharge, but that every such commission shall have relation to avoid any assignment of the estate and effects under this act, as if the act had not been made."

And by act 3 Geo. 4, c. 123, (in amendment of the last-mentioned act) it is enacted,

Sec. 1, "That a provisional assignee may take possession himself, or by means of a messenger of the court, or other person or persons appointed by him, of all the real and personal estate and effects of every insolvent, and if the court so order, sell or otherwise dispose of the same, and out of the proceeds defray all expenses; and that real or personal estate, money, and effects, vested in or possessed by such provisional assignee, shall not remain in him, if he shall resign or be removed from his office, or in his heirs, executors, or administrators, in case of his death, but shall go to and be vested in his successor."

Sec. 2 authorizes "the provisional assignee to sue in his own name, if the said court shall so order, for the recovery, obtaining, and enforcing of any estate, debts, effects, or rights of the insolvent."

Sec. 3 enacts, "That in all cases after assignment by the provisional assignee to the acting assignee or assignees all the estate and effects of every such prisoner shall be, to all intents and purposes, as effectually and legally vested by relation in all and every such assignee or assignees, as if the first assignment had been made by such prisoner to him or

them; but no act done under or by virtue of such first assignment shall be thereby rendered void or defeated."

Sec. 4 enacts, "That in all cases in which any assignee or assignees of any insolvent's estates shall wilfully retain in his or their hands, or otherwise employ for his or their own benefit, any sum or sums of money, part of the estate of such insolvent, the court may order such assignee or assignees to be charged in his or their accounts with the estates of such insolvents, with such sum or sums of money as shall be equal to the amount of interest, computed at a rate not exceeding £20 per cent. per annum, on all sums of money appearing to be so retained or employed."

Sec. 12 provides, "That the court may receive the petition of any married woman without requiring her to execute the conveyance, or assignment, or warrant required by the act of 1 Geo. 4, c. 119; instead whereof the court shall require her to execute a conveyance and assignment for vesting in the provisional assignee all property, real and personal, to which she may be entitled for her separate use, or over which she shall have any power of disposition, notwithstanding her coverture, or which shall be vested in any trustees or trustee or other persons or person for her benefit, and to deliver up all personal estate and effects of which she shall have the actual possession, except her wearing apparel, bedding, and other such necessities, not exceeding in the whole the sum of twenty pounds; and also all other real and personal estate and effects to which she shall be entitled in any manner whatsoever, in possession, remainder, or reversion, subject only to such right, title, or interest as her husband may have therein; all which acts she is hereby empowered to do without her husband, notwithstanding her coverture, so nevertheless as not to prejudice any rights of her husband in such real and personal estate and effects respectively; and that all provisions in the aforesaid act shall apply to her in the same manner as if she had been sole and unmarried; and that such married woman shall also execute a warrant of attorney to confess judgment in one of the superior courts, for the amount of the debts remaining unpaid, from which she shall be discharged under the authority of the said act; but such

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Insolvent Acts.

Assignees
chargeable with
interest for
money retained.

Married women
not to execute
conveyance re-
quired by 1
Geo. IV.; but
conveyance to
be made to
provisional as-
signee, &c.

DEBTOR
AND
CREDITOR.

Insolvent Acts.

judgment shall not affect the rights of her husband, except that the same shall be deemed and taken to be her debt, in case she shall die in the life-time of her husband, to the end that the same may be discharged out of her personal assets, in a due course of administration, or out of her real estate she shall have at the time of her death, but without prejudice to any estate or interest of her husband therein as tenant by the curtesy; and in case such woman shall, during the life-time of her husband, become entitled to any property, for her separate use, such judgment may be enforced against such separate property by suit in equity, or otherwise, under the order of the said court, for the purpose of obtaining payment of so much of the debts from which such woman shall have been discharged by such court as shall then remain unpaid; and in case such woman shall survive her said husband, such judgment may be, after his death, enforced against such woman or her property, real and personal, in like manner as if she had been sole and unmarried at the time she executed such warrant."

Estates of insane persons to be vested in provisional or other assignees.

And judgment may be entered up against him.

Sec. 18 enacts, "That in every case where an insolvent shall be or become of unsound mind, all estates, &c. which if he were of sound mind could or ought to be assigned by him, shall be vested in the provisional or other assignee or assignees, as effectually as if he had been of sound mind, and had duly conveyed the same to the provisional assignee at the time and in the manner provided by the 1st Geo. 4, (c. 119); and that the court may order judgment to be entered up against such insane insolvent, in the same manner as if he had been of sound mind, and had executed a warrant of attorney to authorize the entering up judgment against him."

END OF VOL. VI.

LONDON:

PRINTED BY THOMAS DAVISON, WHITEFRIARS.

